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CONSUMER LAW

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An Analysis of Consumer Protection Law in India

Every person in a country is a consumer because every person, whether rich or poor, purchases goods and services on any given day or for that matter at least once in a lifetime. Since ancient times, consumers have been given a higher pedestal in our economy. Protection of their interests and their welfare is regarded as the most important for a government. This led to a situation where the production of any product is made on the basis of the preferences of the consumer. Here comes the term "Consumer Sovereignty" which is a concept where the consumer in a market is treated as "king" or "supreme".

However, these days are gone and now the concept of consumer sovereignty has become a myth in the modern marketplace. Rather we can see the producer's sovereignty to which consumers have become captives. Although consumers, according to the said concept, are referred to as the 'king of the market', many adverse events, such as deceptive marketing strategies, defective products, deficiencies in services, etc, affect the consumers immensely. The constantly emerging challenges make many consumers detriment and vulnerable.

This is where the consumer movement called "consumerism" and the concept of "consumer protection" arose. We can also witness how the United Nations (UN) contributed to the welfare of consumers. As a result, the Government of India has also made substantial efforts to preserve the rights and interests of consumers and meet their needs through various provisions in a number of laws and other regulations. This article discusses every aspect related to consumer protection laws in India and in-depth analysis.

Need for consumer protection

Every person in India, irrespective of age, financial status, and other factors, from birth to death, consumes or avails one or the other good or service. Consequently, it is essential that every

consumer makes an informed decision about the value of his or her money and that his or her interests are completely protected with respect to:

- The purchased goods without defects that are fit for consumption;
- Services are without any deficiencies.

Many manufacturing units and service providers that sell goods and render services respectively, with the primary goal of increasing their positive returns, frequently engage in such activities that are at the disadvantage of the consumers, such as selling poor-quality or defective products or rendering unsatisfactory services that fall below expectations in one way or the other.

Furthermore, many industries which aim to become a monopoly usually indulge in various unfair practices, such as rate cutting, deferred rebate, full line forcing and other malpractices, which makes consumers vulnerable. Later, a need has come to save consumers and, thus, the concept of consumer protection came into the picture to remove the plight of consumers.

Through this concept, every consumer is provided with rights and remedies. However, the ignorance of the consumer regarding their rights and remedies enables the producers to take advantage of them. Manufacturers, distributors, sellers and retailers frequently make huge profits by purposefully and intentionally lowering the quality of the goods and providing false information, amongst other practices.

Consumers are negatively impacted by these malpractices by producers. Hence, consumers must be informed of their rights, speak out against exploitation, and file complaints to have their complaints heard. As a result, the necessity, as well as the importance of consumer protection, is growing day by day.

History of consumer protection

The concept of consumer protection is not something new in India. It is as old as trade and commerce itself. It has its roots in our country which date back to 3200 B.C. In ancient India, human values and ethical behaviour is at the core of Indian culture and ethos. Also, the welfare of the people is the primary objective of governance of the ancient rulers. Hence, those rulers kept norms and values in their minds while making rules and regulations to make them suitable for the then-Indian society. Even for spiritual purposes, both rulers and traders followed dharma while making policies or rules and doing trade and commerce respectively. For this objective, the ancient kings started controlling not only the social lives but also the economic lives of people by

imposing numerous trade restrictions on producers and traders to safeguard the interests of

consumers.

Let's look into those ancient texts where a few rules are formed with the motive to promote "consumer protection."

In Manu Smriti

Manu Smriti, which is a compendium of laws that are considered to have supreme authority in the Hindu darshan theology. It discusses even the economic scenario of ancient Indian society, besides social and political ones. Manu Smriti, which contains various concepts like traditional law, legal institutions, etc, also provides a vivid idea of ethical business practices. Manu, who usually emphasizes law and danda i.e., the secular power of punishment, developed a code of behaviour for businessmen by prescribing rules to be followed and punishment to be imposed for those wrongdoers who committed a specific offence against consumers.

Additionally, it is interesting to note that Manu also specified criteria to evaluate whether a person is competent to enter into a contract. Also, he made such an administrative system that regulated the prices of commodities, identified the traders' evil strategies, punished offenders and laid down various other measures. Once every six months, all weights and measures had to

be inspected and the findings of all these responses were carefully recorded (Source: Journal of Texas Consumer Law).

In this way, Manu Smriti handled various consumer-related issues of ancient times, surprisingly, many of which are still a problem in modern times.

In Arthashastra

Arthashastra, which literally means 'science of money', not only deals with an administrative structure for governing a political economy but also emphasises consumer protection. It explains how the state controls the economic activities of its subjects and was made responsible for preventing offences against consumers during Chandragupta Maurya's times.

During this time, healthy trading practices can be seen due to the strict rules and regulations and penalties for infringement of those. A 'director of trade' was appointed to monitor market conditions and ensure ethical trade practices. Several punitive steps were adopted in the case of violation of the official rules and regulations of the government for weights and measures.

Kautilya said that every four months, the appointed supervisors should have the weights and measurements stamped. The penalty for not having them stamped was also fixed. Additionally, punishments were imposed for carrying out smuggling and adulteration. On the other hand, the

interests and rights of the manufacturers and producers are also safeguarded by the Arthashastra (Source: Journal of Texas Consumer Law).

Furthermore, there is a system of justice that is very much accessible to everyone. Thus, even consumers have assured protection through the said judicial system because Kautilya said it is the king's duty to ensure justice delivery to each and every subject.

In this way, during the reign of Chandragupta Maurya, ethical business practices were prevalent. In rare cases where abuse of consumers was found, the state was obligated to protect the general public.

During Medieval times

Even during the medieval period, consumer protection remained the top priority for the monarchs. The prices used throughout the Sultanate period were dictated according to the regional circumstances. At that time, the market also had a system to monitor prices. The reign of Alauddin Khiliji exhibited the establishment of rigorous market regulations, In addition to this, shop owners who underweighted their commodities were also penalised.

During the British period

In the modern era, the British system took over India's long-standing traditional legal system and created a uniform national legal system. A few of the statutes which protect the interests of consumers were enacted during the British regime as follows:

- The Indian Contract Act, 1872;
- The Sale of Goods Act, 1930;
- The Indian Penal Code, 1860;
- The Drugs and Cosmetics Act, 1940;
- The Usurious Loans Act, 1918; and
- The Agriculture Procedure (Grading and Marketing Act), 1937.

These legislations gave special statutory protection to consumers in our country. The Indian Penal Code, 1860, also provides various provisions to safeguard the interests of consumers against various cases of abuse and malpractice in the market.

The Sale of Goods Act, 1930 (hereinafter referred to as "SGA"), which is a remarkable piece of legislation that has been drafted very carefully, served as India's sole source of consumer protection for 55 years. It is highly praised as a "Consumer's Charter." It offers exceptions to the maxim 'caveat emptor' (Let the buyer beware) and ensures that the interests of the consumers are adequately protected. Before the Consumer Protection Act, 1986 was passed to supplement

the remedial measures previously offered by the SGA, the SGA served as the only consumer protection law.

Consumerism

The expansion of industrial capitalism and the industrial revolution in Europe, which were characterised by large-scale economies and growth in production, have been attributed to “consumerism” since the 18th century and beyond. The commercialisation and the entry of creative manufacturers strengthened buying habits and raised consumption, which further led to the accessibility of products in European society. They adopted various business techniques to make products alluring, creating a purchasing and consuming addiction. Indeed, strategies by manufacturers and producers for ensuring that those addictive goods were in demand were more prevalent. This led to a detriment for consumers. Thus, consumerism came into the picture.

Consumerism is an organised and collective movement by both citizens and the state to enhance the power and protect the rights of consumers compared to those of producers. It is a societal force to encourage industries to be more credible and accountable to customers.

The first consumer organisations were born in Denmark in 1947 and in Great Britain in 1955, where the government created the Consumer Council to enable consumers to express themselves on issues reserved for producers and traders. But actual consumerism started in the US, where people like Ralph Nader led the movement for consumer rights.

Consumerism in India

Consumerism has been prevalent in India too for a while. The contributing factors to consumerism in India include inflation, a rise in pricing, deceptive advertising, unsatisfactory product performance, and deficiency in service. Through the law, the government has been attentive and responsive to the needs of consumers. Thus, to have their complaints heard and addressed, consumers must defend their rights.

C. Rajgopalachari in India deserves credit for launching the consumer awareness campaign. One of the results of the campaign is the establishment of the first Consumer Protection Council in 1950 in Madras by Rajaji.

For more details on the historical background of consumer rights and their development in the international scenario, [click here](#).

What are consumer rights

Now, there is no need for consumers to remain as helpless as they did in the past because many laws, including the Constitution of India, protect consumers by empowering them with rights that are known as “consumer rights” because they aim to protect the interests of consumers? These laws also impose obligations on retailers, manufacturers, distributors and service providers while granting consumers a wide range of rights. More significantly, the majority of these rights are backed by punishments and penalties imposed by various statutory enactments, proving that they are more than just social norms.

History of consumer rights

The concept of consumer rights is a contemporary invention. In terms of quality, price, and availability, producers and traders have often neglected the interests of consumers. The Consumer Movement was born out of knowledge of this problem. The first historic move was made by the United States of America, which pioneered this in the 1920s, and other nations gradually adopted it.

61 years ago, on 15 March 1962, which is now celebrated as World Consumer Rights Day, the then US President John F. Kennedy presented a speech to the US Congress, when he moved the

Consumers’ Bill of Rights, in which he said that, “If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened and national interest suffers.” Thereafter he listed four basic consumer rights. Those are as under:

- Right to safety;
- Right to be informed;
- Right to choose; and
- Right to be heard.

Thus, the consumers’ interests and national interests are put on the same footing. As a result, a consumer who is conscious, informed, and empowered will be an informed citizen who contributes to total economic growth, welfare, and prosperity.

Since people like Ralph Nader and others did take up different problems in the best interests of consumers in the United States, the consumer movement and consumer empowerment developed quickly there. However, the rights of consumers only took on an international form once the United Nations General Assembly (UNGA) adopted the United Nations Guidelines for Consumer Protection through a resolution on April 9, 1985. This resolution was passed on 16 April 1985 and added four more consumer rights to John F. Kennedy’s four fundamental

consumer rights. Those are as follows:

- Right to the satisfaction of basic needs,
- Right to redress,
- Right to consumer education, and
- Right to a healthy environment.

The resolution encouraged countries to establish, preserve, and strengthen a robust consumer policy and also provide better consumer protection by detailing several procedures and policies centred around seven consumer issues, namely, physical safety and health, quality and standards, basic goods and services, education and information, economic interests and reasonable prices, redressal, and protection.

These ultimately served as the foundation for articulating consumer rights. They offer a solid foundation for the creation of consumer policy on both national and global levels. Although the U.N. Guidelines are not an official international convention or treaty and are not in any way legally binding on member states, they still have a strong moral impact.

Consumer rights as per the Indian Constitution

The Constitution of India is the backbone of the entire legal system of India. This conveys the meaning that every law or legislation enacted in India will be made in conformity with the spirit of the Constitution and, in some way or the other, helps in the fulfillment of the principles and objectives laid down in the preamble of the Indian Constitution.

To study consumer protection law in the context of the constitution, a constitutional mandate on consumer protection is necessary. Now, a query may arise whether there were any Articles in relation to the concept of consumer protection. The answer to this query is yes. Although it is not explicitly stated anywhere in the Constitution, the Preamble of the Constitution, Fundamental Rights, and Directive Principles of State Policy (DPSP) resonate with the notion of consumer justice.

Let us explore consumer protection jurisprudence within the ambit of the Constitution of India.

Preamble

The Preamble emphasises preserving and promoting social, economic, and political justice. For a

better understanding, if justice was a tree, then consumer justice represents one of its branches.

“Consumer justice” is a component of and essential to social and economic justice, both of which

should be ensured by the State for its people. The State should aim to ensure that the consumer receives goods of appropriate quality and quantity for what he or she has desired to purchase. The concept of consumer justice also includes providing various steps and measures for consumers from the various cases of abuse, evil practices and exploitation by market players whose occurrence ultimately makes consumer detriment, addressing consumers' complaints and delivering appropriate remedies.

Any consumer in a country requires legal protection to achieve a significant amount of economic equality in any marketplace and the concept of social justice is a shield to do so because, presently, they are in an inferior bargaining position compared to manufacturers, traders, sellers, and distributors. In this way, a branch of economic justice called consumer justice seeks to create a 'welfare state' and an 'economic democracy'.

Furthermore, the word 'socialist', which was added by the 42nd Amendment, constitutes a form of government where the state has control over essential industries, along with encouraging positive and constructive roles played by private industries, to reduce poverty, income disparity, and to give working people a decent standard of living. This concept of socialist democracy prevents consumers from becoming vulnerable to unfair trade practices of producers.

Article 19 of the Indian Constitution

If we examine the aspect of the implementation of consumer rights, it is majorly dependent on the right to information regarding the quantity, quality, potency, standard, purity, and price of the

product. Also, as per John F. Kennedy, the right to be informed is one of the primary rights of every consumer. On the other hand, in India, the freedom of speech and expression protected by Article 19(1)(a) of the Indian Constitution has an integral part i.e., the right to know and the right to receive and impart knowledge. The Supreme Court has also multiple times stated that a citizen has a fundamental right to access and receive information.

The Supreme Court explicitly acknowledged the freedom to access information about goods and services from print media advertisements in the case of *Tata Press Limited v. Mahanagar Telephone-Nigam Limited and Ors.* (1995). In this case, the Supreme Court judge, Justice Kuldeep Singh, made the following observations:

"The public at large has a right to receive the 'Commercial speech'. Article (19)(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfillment has to be guided by the information disseminated through the advertisements.

The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of ‘commercial speech’ may be having a much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to the general public than to the advertiser who may be having purely a trade consideration.”

By the above observation, we can tell how the Supreme Court is affirmative about the importance of access to information about goods or services to a consumer through the way of advertisements and how it is connected to the fundamental right under Article 19. Thus, Article 19 will ensure any consumer receives information regarding any details of goods or services that a consumer purchases.

Article 21 of the Indian Constitution

As we know, Article 21 of the Constitution of India ensures that no person in our country shall be deprived of his life or personal liberty except according to a procedure established by law. ‘Right to be informed’ is not only connected to Article 19 but also to Article 21 which was made broader due to various judicial decisions. One such affirmation was made by the Supreme Court in the case of *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.* (1988) where it was stated that the general public has a right to know so as to contribute to the industrial growth of the economy. It also specified that, according to Article 21 of the Indian Constitution, the right to know is one of a range of constitutionally guaranteed rights to which all citizens are entitled. Furthermore, the Supreme Court, in this case, went on to say that the said right has taken on a new seriousness and depth, imposing higher responsibilities on those who undertake the duty of providing information.

Therefore, with the said Article, consumers have been conferred with a consumer right i.e., the right to know by making it an integral part of Article 21 of the Constitution of India.

Articles 32 and 226 of the Indian Constitution

Article 32 of the Constitution of India provides for the right to enforce fundamental rights by the Supreme Court through the issuance of writs. This article assures every person by giving them an opportunity to approach the Supreme Court of India to preserve and enforce their fundamental rights, especially in cases of their violation. Whereas, according to Article 226, the High Court may issue writs on any matter pertaining to fundamental rights.

Since the Supreme Court has frequently weakened the idea of judicial discretion and permitted public-spirited people or groups to enforce the rights of disadvantaged and backward sections of

society, Articles 32 and 226 of the Indian Constitution are also vital to consumer protection. Additionally, a consumer has the right to approach the Supreme Court or the High Court whenever his or her 'right to be informed', which is an integral part of Articles 19 and 21, is infringed.

Articles 38 and 39 of the Indian Constitution

According to Article 38(1) of the Constitution of India, "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life." Even though it is not enforceable in a court, the Article imposes a duty on the State to enhance social justice in the country by removing any inequalities in aspects like status, facilities and opportunities. A consumer who is also a citizen of the country is entitled to social justice by virtue of this Article.

Moreover, Articles 38 and 39 of the Constitution also deal with "distributive justice." It should be noted that the idea of distributive justice implies, among other things, the elimination of economic inequalities and injustices that emerge from deals and transactions that are made unequal in society.

The mentioned articles also stipulate that the state has a duty to shape its policies in a way that secures the equitable ownership and control of the economic assets of citizens to prevent the concentration of wealth and promote the welfare of the general public. As a result, the state has a

responsibility to protect consumers from monopolistic and unfair trade activities carried out by large-scale companies and monopolies.

Furthermore, Article 39(a) states that the citizens, men and women equally, have the right to an adequate means of livelihood. The article requires the state to offer free legal help to ensure that no citizen is denied justice due to financial or other barriers. We can also interpret the phrase "any citizen because of economic or other disability" from the perspective of the consumer. A few consumers are unable to enforce their rights by approaching court due to poverty, ignorance, and a sense of powerlessness. Because of the constitutional mandate given under Article 39, the State should provide legal services free of cost to needy consumers.

In this way, Article 39 through the State provides a right to a consumer to approach the court for enforcement of their rights irrespective of financial incapacity.

Article 47 of the Indian Constitution

Article 47 of the Constitution of India commands the State to enhance public health and raise the standard of living and nutrition of its citizens. Article 47 falls under the Directive Principle of State Policy, whereas Articles 21 and 32 are fundamental rights. Hence, the State is expected to make efforts to supply those goods that are safe and fit for consumption, which further ensures the good health of consumers. Therefore, the State has a duty to effectively monitor the market for contaminated food products and other supplies that endanger public health and safety. All of the aforementioned are just a few of the constitutional provisions that provide citizens with broad authority as well as consumer power, which further promotes the concept of consumer protection.

Consumer rights as per the Consumer Protection Act, 1986

On the lines of the above-mentioned eight-fold path for consumerism, i.e., the four basic consumer rights given by John F. Kennedy and the other four more rights given by UN Guidelines, the Indian Parliament enacted the Consumer Protection Act (hereinafter referred to as the “CP Act”) on 24 December 1986, which was celebrated as National Consumers Day in India. However, it should be noted that by virtue of Section 107 of the new Consumer Protection Act, 2019, the CP Act, 1986 has been repealed entirely.

Immediately after the United Nations guidelines for consumers were adopted in April 1985, the Consumer Protection Act was passed in India in 1986. This is the next major consumer protection measure, after the Sales of Goods Act, 1930, which significantly boosts consumer power and ensures the protection of consumer interests. It is regarded as being among the most remarkable pieces of consumer protection legislation in the entire world.

This Act bestows six rights on consumers, which are:

Right to Safety

According to Section 2(9)(ii) of the CP Act, 2019, a legal right is given to every consumer to be protected from those goods and services that endanger life and property. Here, it is also pertinent to note that every product and service brought by consumers should not only serve their present requirements but also their long-term interests.

It should be kept in mind that the right to safety not only ensures the standard and quality of a good at the moment of purchase but also after the purchase of the said good. This conveys that the products sold by sellers should satisfy consumers’ long-term expectations regarding their

safety. Therefore, consumers have the right to demand both product quality and the guarantee of the goods and services before making any purchase. And, services are not an exception, even services rendered by service providers should ensure that they would not harm the health of consumers.

This particular right is provided to every consumer by the State as we can see in many instances in markets where hazardous goods are being sold. Hence, consumers should prefer buying high-quality products with labels like ISI (Indian Standard Institute) or AGMARK (Agriculture Marking). However, a consumer possesses this right to safety even in the absence of a guarantee.

Thus, this right is crucial because it safeguards the consumers from risks and harm to our bodies, lives, health, and property caused by the negligence or willful misconduct of sellers, buyers, or service providers.

Illustration

You chose to take a bus to reach your destination rather than a cab or an autorickshaw. The driver of that bus, unfortunately, hasn't bothered to check its mechanical condition, and the worst thing is that an accident occurs because of defective brakes when it is on the road.

Here, the injury to you or another passenger represents a breach of the consumer's right to safety. As a result, you and any other passenger who sustains injuries are entitled to compensation because of this violation of consumer rights.

Similar violations include using an electric iron that causes electric shock, a doctor performing an operation while negligent, and a bus driver operating a bus in a risky manner.

Right to be informed

According to Section 2(9)(ii) of the CP Act, 2019, every consumer is conferred with a right to be informed concerning all aspects of goods, products, or services, such as quality, quantity, potency, purity, standard, and price, as the case may be. This right is given to consumers to protect them from unfair trade practices. Additionally, this right was made an integral part of Articles 19 and 21 by various judicial pronouncements.

In addition to this, according to Section 2(47)(vii) of the CP Act, 2019, 'unfair trade practices' are defined as when a trader or service provider fails to give a receipt for the products sold or service offered. This provision was included in the new Act since it is the consumer's right to be

informed about the cost of the goods or services they are buying or hiring. The other use is that a

valid receipt would also provide the consumer with documentary evidence that he bought the product or used the service from the specific trader or service provider, which he might use in Consumer Commission proceedings.

Furthermore, by using the provisions of the Right to Information Act, 2005, any consumer has the right to obtain information against any public authority which is dealing with the selling of products or the rendering of services. The information about details of the product or service, as the case may be, can be received through the said Act. It should be noted that willful concealment of pertinent information by a service provider constitutes a 'deficiency' in the said service under Section 2(11) of the CP Act, 2019, according to the law.

The Central Information Commission, a body constituted under the Right to Information Act (RTI), 2005, in *Nisha Priya Bhatia v. Institute of Human Behaviour and Allied Sciences*, held that denial of information to the RTI applicant, who is also a consumer of the hospital (respondent in this case), amounts to the denial of his "right to be informed" of services rendered to him.

Illustration

Let us imagine two scenarios. In the first scenario, you frequently buy a particular medicine whose purpose is to treat an illness or a disease. However, it could occasionally turn out to be hazardous to specific individuals or by overdosage. In the second scenario, a tablet with the same ingredients may have been produced by various pharmaceuticals under various brand names and priced differently i.e., lesser compared with those brands which are purchased by the consumer. In the first scenario, you took the medicine even though you were unaware of its negative side effects as it was not specifically warning regarding competent patients or dosage limit. In the second scenario, you are forced to purchase a brand of tablet because you are 'unaware' that other brands are available. In both of these scenarios, if you had known a few facts beforehand, you could have avoided suffering from health or financial losses. Sellers generally don't inform consumers about the availability of product quality or alternatives out of a desire to mint money by selling whatever they have on hand or the product that gives them the highest profit margin. Because of these scenarios happening in a market, the CP Act conferred a consumer right i.e., the 'right to be informed' to every consumer.

Thus, before choosing or making a decision, the consumer, by virtue of the right to be informed, has the choice of demanding to acquire all the facts regarding the good or service, so that he or she will be able to act sensibly and responsibly as well as avoid traps made by evil marketing tactics. This right promotes prudent and responsible behaviour on the part of the consumer and

serves as a warning against opting for high-pressure sales tactics.

Right to choose

The right to choose, which is provided under Section 2(9)(iii) of the CP Act, 2019, refers to the right to be guaranteed access to a wide range of goods and services that are of good quality and at reasonable prices wherever possible, especially in the case of monopoly kind of market economy. The right to basic and essential goods and services is also included in the ambit of the right to choose. This is because the majority may not receive its fair share if the freedom of choice of the minority is unlimited.

In an imperfect competition market, where a range of products are offered at competitive prices, this right can be properly and efficiently exercised by the consumer. Additionally, in such a competitive market, a consumer has the privilege to choose the product of his or her choice and to be satisfied with the range of options available in terms of quality and cost of the product or service. In such a scenario, a shopkeeper or a retailer can also not pressurise or compel a consumer to purchase a specific product or brand.

But, in several sectors and locations in India, there are currently no such markets. However, even in those situations where there is diversity, retailers are not providing consumers with the full choice of products because they are concerned about the earnings they may make. The consumer gets the impression that there is either no variety or it is not readily available. Therefore, in order to protect the rights of consumers, the right to choose is given to them.

Illustration

You went to a shop and bought an expensive product despite knowing that the same product from another brand was cheaper. If you made such a choice because of the non-availability of products from other brands, then it is regarded as a violation of the consumer's right to choose. You can even approach the court if you suffer significant damage because of such consumption. Let's take a second scenario. A consumer is forced to purchase a sim card that has an exorbitant price as there is no other alternative choice. That is, in the case of monopolies where only one company is manufacturing and selling sim cards, a consumer has no access to a variety of brands for purchasing sim cards and, thus, no option but to purchase that particular sim card to avail the telecommunication services.

Right to be heard

The right to be heard is provided under Section 2(9)(iv) of the CP Act, 2019. With the

enforcement of this right, the interests of the consumer will be adequately and fairly taken into account in relevant forums. It also involves the right to be represented in a variety of forums that are established to look out for the welfare of consumers by hearing their concerns. Above all, the right to be heard is also one of the principles of natural justice. Every person, including

consumers, should be given a chance to present his or her claims and prove the damage he or she suffered before appropriate commissions which are empowered by the said Act.

Both the State and the non-profit organisations are expected to incorporate these essential forums for the enforcement of this particular right. Hence, the government of India established consumer forums at the district, state, and national levels to hear consumer complaints and grievances by virtue of the provisions of the CP Act.

For the purpose of being represented on various committees established by the government and other entities on subjects relevant to consumers, the consumers themselves have begun to form voluntary, non-governmental and non-profit consumer organisations.

Illustration

A buyer, who is a businessman, ordered food from an online food delivery app. Due to the negligence on the part of both the company, which delivered the said food and the restaurant which was chosen by the consumer by believing the shop's image in public, the said consumer became ill and was admitted to hospital. Because of his illness, the businessman did not attend his very important meeting with potential clients, which led to the failure of his important project. In this case, we can observe how much damage was suffered by the said businessman due to the consumption of unhygienic food which happened due to the negligence of both companies. Here, the CP Act gives a right i.e., the right to be heard to the aggrieved businessmen before an appropriate commission so that they may be entitled to compensation.

Right to seek redressal

This right, which was given under Section 2(9)(v) of the CP Act, 2019, gives a consumer an opportunity to file a complaint against unfair trade practices or the unscrupulous exploitation of consumers by product sellers or service providers. It also involves the right to a proper resolution of the consumer's complaints and grievances. Aggrieved consumers who have genuine complaints have the right to lodge a complaint before appropriate courts and seek redress for the loss suffered by him or them. Redressal is the logical step after complaints are heard and a resolution is reached.

This right also ensures the recovery of the money paid by consumers for buying products or services that later turned out to be defective or deficient. The effective use of this right depends on the existence of legislation and processes for filing complaints. Also, several laws, including the CP Act, allow complaints to be filed in different courts.

Sometimes consumers' problems may be of little value, but they may have a huge impact on society as a whole. They can also request the aid of consumer advocacy groups to help them resolve their disputes.

Right to Consumer Education

This right, which was provided under Section 2(9)(vi) of the CP Act, 2019, ensures that a consumer has the freedom to develop the knowledge and skills necessary to make wise and informed decisions as a prudent consumer. This right is given due to the ignorance of consumers, especially those who live in rural areas, and their not being fully aware of the consequences of buying or availing of the goods or services, which is the main cause of their victimisation. Thus, they must be aware of their rights and actively exercise the same, and information must be accessible at different levels and in different ways. Only then can successful and effective consumer protection be accomplished.

As a result, it becomes the responsibility of the government to inform consumers of their rights. Their education also includes raising consumer awareness. This will support consumers in safeguarding themselves against false, deceptive, and blatantly misleading advertisements, and other business activities. Also, consumers may advocate for themselves by becoming informed about their rights and problems.

Consumer education also increases vigilance and the capacity to inquire about the cost and quality of goods. In a sense, the right to consumer education is a crucial tool for exercising other consumer rights. Therefore, we must give consumer education the attention it deserves.

Specific issues relating to consumers' rights

The concept of consumer rights makes it seem like consumers today have a lot of legal protection. But a significant portion of us is still exploited today. Among the causes of ongoing exploitation are:

Lack of awareness

Mainly among rural regions, there is a complete lack of awareness about one's rights being a consumer and how to employ them. Therefore, it is important to raise consumer awareness

among all facets of society, but especially among the illiterate and, even more so, the vulnerable and backward classes. The present situation is such a way that even some educated consumers are unaware of both their legal rights and the availability of consumer dispute resolution forums. The central government, the states, and non-profit consumer organisations working in both urban and rural areas are doing a lot to raise awareness of this issue. Informed citizens, educators, students, and journalists have a specific purpose to increase these efforts.

Responsibility

Along with ignorance, there is also a lack of responsibility. There are two different kinds of responsibility. One obligation is to uphold our rights, and the other is to fulfill our obligations relating to those rights as a consumer. It is practical to say those laws by themselves have no function if not being aware of the public at large and enforced with responsibility. Therefore, these rights will only exist on paper until we educate ourselves about the laws, let the traders know that we are aware of them, have the necessary power to file complaints against rights violations, and continue to act upon such complaints. This would be a real solution to most of the consumer problems prevailing in India.

Consumers' obligations as a correlation to their rights

The statement that rights and obligations are two sides of the same coin is a reality. Also, we can talk about the concept of consumer protection, we should not only take consumer rights into account but also should focus on the obligations of consumers.

Consumers have two different types of obligations.

- Fulfillment of obligations by a consumer for one's protection
- Consumers' obligations towards others

Fulfillment of obligations by a consumer for one's protection

The first obligation is the fulfilling of obligations that are necessary for the protection of our rights as consumers. For instance, it is the responsibility of the consumer to only purchase products with the ISI mark, especially where safety is paramount, such as electronic equipment, technical items, helmets, etc., to effectively defend his or her right to safety and a healthy environment. The same principles apply to food, especially spices, oils, ghee, atta, etc.

Purchasing packaged foods with an AGMARK certification is the responsibility of the consumer.

The four rights protected by AGMARK products were: the right to safety, the right to

information, the right to make a choice, and the right to be heard. Even when purchasing packaged goods, consumers are responsible for checking the batch number, manufacturing date, date of expiry, any warnings or instructions given and other information.

Besides this, a consumer cannot rely solely and blindly on the claims of advertisements while deciding to purchase a product. Even if they try, consumers cannot avoid advertisements because these have intertwined themselves into the everyday life of a consumer. But still, consumers should always be on the alert whenever they come across misleading marketing strategies that could tempt them to purchase goods that are not what they want to purchase.

In addition, each consumer is obligated to request a receipt after purchasing products or services. The receipt serves as evidence of purchase and has the potential to start a lawsuit if the consumer

feels defrauded after purchasing the goods. Because it is required for the vendor to include the tax amount on the bill, the customer can also ensure that the government is receiving tax on the goods through the bill. The consumer becomes a responsible citizen of the nation through such an action. In a nutshell, a consumer should be an informed and prudent person all the time and make purchasing decisions wisely.

Consumers' obligations towards others

The Second obligation is consumers' obligations toward others. These could be referred to as our social and ecological obligations. In terms of society and the environment, it means that, as consumers, we should choose wisely what we buy and consume. Concerns with careless consumption include pollution, the depletion of resources and energy, and the growth of hazardous waste. The consumers' right to a healthy environment is impacted by the purchase of an inferior car that produces excessive smoke which is hazardous for the environment.

Overbuying products that are in short supply interferes with others' rights to availability, fair pricing, etc. Therefore, let's not lose sight of the fact that our purchase decisions have an impact on others, particularly the environment.

Who is a consumer

Consumers in a country are the greatest economic group that influences and is influenced by practically all economic decisions, both public and private. Consumers account for two-thirds of all economic expenditures. However, they are the only significant economic group that is poorly organised and whose opinions are frequently ignored. That is how the enactment of the CP Act, which object is to serve to protect the interests of the consumers, took place. The whole Act is

centred around consumers. Because examining whether a person is a consumer or not is a crucial component of establishing significant remedies under the CP Act, it is of the utmost importance for us to know how 'consumer' is defined and who is the consumer under the CP Act.

The word 'consumer' is a comprehensive concept. The definition provided under Section 2(7) of the CP Act, 2019, along with the explanation clause, clearly and unambiguously explained the term 'consumer'. This subsection almost exactly copies the word 'consumer' from Section 2(1)(d) of the previous CP Act, 1986. But the only difference is that in the new Act, there is an insertion of an 'explanation' clause to avoid vagueness and uncertainty.

Simply put, a consumer is someone who either pays consideration for the purchase of a good or avails of service; the consent of the person who paid for the good or service is crucial to consider when evaluating who is a consumer.

Here, an explanation is provided, stating that anyone using the goods for a 'commercial purpose' is not referred to as a 'consumer' according to this subsection. Moreover, using the goods for self-employment does not constitute using them for commercial purposes.

Additionally, the "explanation" clause further explained in this subsection that the phrase 'buys any products' or 'hires or avails any services' also includes the purchasing of goods or services by way of electronic means, such as teleshopping, direct sales, or multi-level marketing, apart from offline purchases. This tells that purchase of goods or services, irrespective of the fact whether brought via online platforms or physical stores, covers under the ambit of the CP Act, 2019. Even though the judiciary has given the term 'consumer' a wider range of meanings, the legislature should still give it a clear definition by stating that even goods bought or services contracted electronically fall under this subsection. This will lessen the burden of interpretation on the judiciary because, in this technological age, a significant portion of consumer cases will come from online transactions.

Illustrations

- A paid Rs. 500 for the purchase of Biryani from the online retailer 'Yaamazon' but later discovered that the ordered goods were damaged during transportation. Here, A paid for the service with the intention of consuming it, not for resale or any other commercial purpose. Clearly, A meets the criteria of a 'consumer' to lodge a complaint against Yaamazon for receiving defective goods and deficient service.
- When B ordered a watch from 'Snopdeel' by transferring money online. She planned to give it to her friend C as a gift and provided C's address for the delivery of the

watch. C received a 'bracelet' from Snopdeel instead of a watch. As the action of Snopdeel amounts to a 'deficiency in service' in the current case, either B or C may bring a consumer complaint against Snopdeel as B here used the service of Snopdeel by paying the amount, and C became a beneficiary of that service by agreeing to use the watch with A's approval.

□ M paid the required payment and received a purchase invoice for a T-shirt from Z, a clothing store. M's friend C visits her at her home and wears the T-shirt to an event without her approval. Later, C discovers that M's T-shirt, which she had bought, is torn from the stitching, and she wishes to complain to Z about this. In this case, C is not a consumer because he did not use M's T-shirt with M's consent.

Who is not a consumer

The following people are not considered to be "consumers" according to the CP Act:

□ A person who purchases goods for resale or commercial use or purpose: A buyer is not referred to as a consumer if he or she purchased something with the intention of reselling it or being used for a profit.

□ A person who receives goods or services for free: Consideration is an essential element to be fulfilled while purchasing goods or services. The same was clearly

stated in the definition itself. Any purchase of either goods or services without consideration is not regarded to be in the context of a consumer-business relationship and hence, such a buyer is not treated as a consumer.

□ One who engages in personal services: A person who receives personal assistance from an individual who is not engaged in any business activity is not a consumer either. Getting personal services from family is not a consumer. For instance, if a mother prepares meals for her son, here, the son is not a consumer due to the fact that he does not receive voluntary personal services from his mother without paying any consideration for it.

Case laws

As previously stated that judiciary interpretation further gave clarity on who is a consumer, let's look into a few specific case laws that are important to study for a better understanding of the term 'consumer', which are as follows:

Purchasing goods for personal use by a business organisation is a consumer

The Supreme Court ruled in the case of Lourdes Society Snehanjali Girls Hostel and Anr. v. M/s H & R Johnson (India) Ltd. and Ors. (2016) that a registered hostel society, which collects fees

from the students, is a 'consumer' under the CP Act if it discovers defects in the manufacturing of floor tiles that it has bought from the respondent. But even though the hostel takes fees from students and engages in 'commercial activity', the three-judge bench noted that "the purchase of tiles and laying in the same in the rooms of the girl's hostel run by the appellant i.e., Society is clearly not for any commercial purpose."

An NRI taking a shop for a livelihood is a consumer

A Non-Resident Indian (NRI), who rents a store in India with the goal of making a livelihood is considered a 'consumer' because his actions fit under the category of 'self-employment' and not under the category of 'commercial purpose'. This is observed in the case of Sunil Kohli v. M/s Purearth Infrastructure Ltd. (2019).

A beneficiary of an insurance policy is a consumer

Recently, in the case of Canara Bank v. M/s United India Insurance Co. Ltd. and Ors. (2020), the main issue is whether the farmer is a consumer especially when the insurance policy is between the insurance company and the cold store. Then, the Supreme Court decided that not

just the party to the insurance policy but also any beneficiary of an insurance policy, in this matter, a farmer, falls under the ambit of 'consumer' in the CP Act. Thus, the ambit of consumer definition is enlarged by including both the insured and beneficiary of the insurance policy.

A potential investor is not a consumer

In the case of Morgan Stanley Mutual Fund v. Kartick Das (1994), the Supreme Court decided that "till the allotment of shares takes place, the shares do not exist. Therefore, they can never be called goods." In this case, the potential investor, i.e., the one who is most likely to invest in the company's equity, had filed a consumer complaint against the mutual fund company, the appellants, alleging that the issuance of one advertisement for buying of shares constituted 'unfair trade practices'. As a result, the Court held that they are never considered to be goods and, therefore, the potential investor would not fit into the criteria of a 'consumer'.

Someone who is simply interested in buying something is not a consumer

The National Consumer Disputes Redressal Commission (hereinafter referred to as “NCDRC”) decided in *Shri Rajeshwar @ Rajesh Tyagi v. M/s Audi India and Ors.* (2016) that a person’s mere desire to buy any good or use any service from a seller or service provider, as the case may be, does not qualify him as a consumer for the purposes of the CP Act.

A lottery ticket buyer is not a consumer

In *Satya Wati Goel (Dr.) (Mrs) v. Director, State Lotteries, Government of Sikkim and Ors.* (1994), the Supreme Court determined that even though the complainant had made and sent a payment request to purchase lottery tickets, he shall be eligible as a ‘consumer’ as specified by the Act. Thus, even if there is a failure by the Government of Sikkim, the respondent in the present case, to provide those tickets, the complaint did not receive any remedies because he is not regarded as a consumer by the court.

A landowner who enters into a contract with the builder is a consumer

A landowner who enters into a contract with a builder for the construction of an apartment and for the sharing of the completed area can be considered a ‘consumer’ under the CP Act. The same was affirmed by the Supreme Court in the case of *Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. and Anr.* (2008).

Differentiating from the ruling of the Supreme Court in the *Faqir Chand Gulati* case on the facts, the Andhra Pradesh High Court held in *Smt. V. Kamala Rao and Ors. v. A.P. State Consumer Disputes Redressal Commission and Ors.* (2010) that the complainants are not ‘consumers’ of the landlords if there is no ‘privity of contract’ between them and the landlords. In this case, the

complainants filed the complaint against the landlords after entering into an ‘agreement of sale’ with the builder.

A government employee who does not receive retirement benefits is not a consumer

According to the decision of the Supreme Court in *Dr. Jagmittar Sain Bhagat and Ors. v. Dir. Health Services, Haryana and Ors.* (2013), a ‘government employee’ who does not receive retirement benefits is not a ‘consumer’ as per the CP Act.

In addition to this, in the case of *the Ministry of Water Resources and Ors. v. Shreepat Rao Kamde* (2019), a two-judge Supreme Court bench quashed the complaint filed by the respondent, who was a government employee and filed a consumer complaint seeking reimbursement

because of the delay in the issuance of his retirement benefits and pension perks, by holding that he, being a 'government employee', is not a 'consumer' on the same grounds and by applying the ratio as laid out in the Jagmittar Sain Bhagat case.

A beneficiary of goods or services is a consumer

According to the judgment in the case of M/s. Spring Meadows Hospital and Anr. v. Harjol Ahluwalia Through, K.S. Ahluwalia and Anr. (1998), the father of the patient, who died due to the electrocution caused by hospital negligence when electricity leaked into the water cooler, falls under the category of 'consumer'. This death is due to an 'unfair trade practice'.

In the case of Lilavati Kirtilal Mehta Medical Trust v. M/s Unique Shanti Developers and Ors. (2019), the Supreme Court stated that the conduct of the trust i.e., appellant, which bought flats for the wellbeing of its employees, cannot be characterised as an act with a 'commercial purpose', and as a matter of fact, the 'trust' would fall under the definition of the term 'consumer' as provided by the Act. The Court further held that because the trust owns the flats for the welfare of its employees, it can be classified under the interpretation of 'consumer' as the hirer of the service for the 'benefit' of others. The court decided in this way by adhering to the standard established in the Spring Meadows Hospital case.

In a similar case of Chandigarh Housing Board v. Avtar Singh and Ors. (2010), the Supreme Court decided that even though the members of the housing scheme were total strangers to the scheme, they could still file a consumer complaint by being qualified as a 'consumer', if they were the beneficiaries of the said housing scheme and were getting benefits from it.

Thus, due to judicial interpretation in various cases, the definition of consumer became so wide that even the beneficiary of a good or service is considered to be a 'consumer' in the eyes of law.

One who buys goods for the sake of others is a consumer

The Supreme Court was asked to decide in Punjab University v. Unit Trust of India and Ors. (2014) whether the university i.e., the appellant in this case, who had invested in a mutual fund scheme of the respondent for the benefit of its employees, could be said to have acted with a 'commercial purpose'. Then, the Supreme Court affirmed that the investment that was made by the university was for the benefit of its employees, not for benefitting itself in any manner, and thus the university in the current case can be said to have invested in the mutual fund scheme with a 'commercial purpose'. The Court further asserted that "the term 'commercial purpose' must be interpreted considering the facts and circumstances of each case" and that "the word

‘commercial purpose’ would cover an undertaking the object of which is to make a profit out of the undertakings.”

With this judgment of the Supreme Court, it is now clear that even while someone may be running a company with a commercial purpose, if the goods or services they acquire are not used to further that purpose, they can still be considered consumers.

If there is no privity of contract, the person is not a consumer

In the recent case of Chairman-cum-Managing Director, ONGC Ltd. and Ors. v. Consumer Education Research Society and Ors. (2019), the Supreme Court had to decide whether the delay in payment of the demands of the retired employees by the appellant’s trust could be considered a ‘deficiency in service’ and whether the claimants could be referred to as consumers.

The Supreme Court determined that because the programme was run by ONGC’s trust and not by ONGC, there was no ‘privity of contract’ between ONGC and the claimants, without going into further detail on those concerns. The Court further stated that “there is no relationship of consumer and service provider between the claimants and ONGC.” From this case, it can be inferred that if there is no ‘privity of contract’, the Consumer Commissions are not even required to consider whether a person is a ‘consumer’ or ‘service provider’.

Consumer Protection Act, 1986

The Indian government has enacted several consumer protection regulations to prevent shortages, unfair prices, adulteration, and other similar malpractices that create problems for consumers. Consumer law is a broad concept that includes those laws that are made by Parliament, such as the Monopolies and Restrictive Trade Practices Act, 1969, the Prevention of Food Adulteration Act, 1954, and the Essential Commodities Act, 1955, among many others.

The passage of the Consumer Protection Act in December 1986 under the leadership of the late Mr. Rajiv Gandhi, the then Prime Minister of India, is a very important achievement in the

history of the consumer movement and hence marked a significant turning point in the concept of consumer law in India.

Need for the enactment of the Act

With consumers becoming more aware of how to safeguard their interests and what the consumer movement was demanding, it was considered that laws protecting consumer rights and providing a more efficient way to resolve their complaints were necessary.

Hence, the government published a draft Consumer Protection Bill and received feedback from a number of consumer advocacy organisations and agencies. After carefully examining consumer protection laws in various countries and consulting with consumers, traders, and industry representatives, the Act was finally passed in 1986 by the Indian Parliament. The Act was amended in 1991 and 1993 to broaden its application and scope and to strengthen the authority of the redressal mechanism.

The objective of the Act

The primary objective of the Act is to enforce better consumer protection in India. The provisions of the Act are compensating in character, unlike existing laws that are punitive or preventative in nature. This signifies that a consumer can seek a replacement for a defective product or a refund of their purchase price. Additionally, the consumer may also be entitled to a refund for any losses incurred due to the use or consumption of defective goods.

The Act aims to offer a straightforward, quick, and affordable means of resolving the complaints of consumers. The Act protects and safeguards the rights and interests of consumers. In order to enforce these rights, it also provides for the creation of Consumer Councils at the central and state levels.

Application of the Act

The Consumer Protection Act, 1986, is made applicable to all goods and services, with the exception of those goods that are bought with an intention for resale or commercial use and services provided without consideration or under a contract for personal service. Also, if the central government specifically exempted a few goods through a notification, the Act is not applied to those goods.

Furthermore, the Act did not distinguish between consumers of public and private organisations. The strong objections of the public sector organisations to being included in the proposed

legislation were overlooked by the late Mr. Rajiv Gandhi. As a result, everyone was covered by the Consumer Protection Act, which was passed to protect consumers of both private and public sector organisations.

Geographically, as per the 2019 Act, it is applicable to the entire country of India, excluding the state of Jammu & Kashmir.

Grievance redressal mechanism as mentioned in CP Act, 1986

The Consumer Protection Act establishes a three-tier quasi-judicial system for resolving complaints at the national, state and district levels. Based on the value of consideration of the disputed good or service, the consumer can file a complaint at the appropriate level for prompt resolution at the district, state, or national levels.

District Consumer Redressal Form would take those complaints where consideration values up to

Rs. 20 lakhs. The State Consumer Dispute Redressal Commission accepts cases involving consideration between Rs. 20 lakhs and Rs. 1 crore, while the National Consumer Dispute Redressal Commission deals with those which are greater than Rs. 1 crore. However, the CP Act, 2019 amended these values. Presently, the pecuniary jurisdiction of commissions, which was revised by a notification given by the Ministry of Consumer Affairs, are as follows:

- District Commissions have pecuniary jurisdiction to hear those complaints where consideration paid for goods or services does not exceed 50 lakh rupees.
- State Commissions have pecuniary jurisdiction to hear those complaints where the value consideration paid for good or service exceeds 50 lakh rupees but does not exceed 2 crore rupees.
- National Commission has pecuniary jurisdiction to hear those complaints where consideration paid for goods or services exceeds 2 crore rupees.

The complaint could be over a damaged refrigerator or mobile phone, a broken phone line or another device, a delay in filing an insurance policy, poor medical care, and so forth. It may be brought against the producer, the selling business, or the individual who offers the goods and services in exchange for payment.

For more information about the Consumer Protection Act, 1986, [click here](#).

Consumer protection measures in India

Due to the drastic transformation of consumer markets since the enactment of the old CP Act in 1986, the emergence of global supply chains, the increase in international trading, and the prevalence of e-commerce have led to a new delivery of goods and services. Equally, this made a

consumer vulnerable to new kinds of unfair and unethical trade practices. This made it inevitable

to amend the Act to address the constantly emerging challenges faced by consumers. This is how the amendment to the old Act and the emergence of the CP Act, 2019, happened.

Numerous measures have been provided under the Consumer Protection Act, 2019 to preserve the interests of consumers and prevent their exploitation by market players. All those consumer protection measures which are envisaged under the new Act are as under:

Repair of defective goods

According to Section 39(1)(a), the District Commission must direct the seller i.e., the opposite party to repair any flaws in the products that the appropriate laboratory identified as 'defects' when it received them for testing. Here, it is important to note that the District Commission can order to repair not only those defects that the complainant had claimed at the time of the complaint, but also can order the seller to repair any other defect that has been identified by the appropriate laboratory.

Replacement of defective goods

According to Section 39(1)(b) of the CP Act, 2019, the District Commission must direct the other party to replace the defective products with new ones that are of similar description and are defect-free. There may be occasions where the flaws in the goods cannot be repaired as required by Section 39(1)(a) of the said Act, hence this provision calls for replacing the defective goods with new ones in order to deal with such conditions efficiently.

According to the provisions of the CP Act, 2019, if the old vehicle is defective ab initio, a new one may be replaced by order of the Consumer Commission. The Consumer Commissions may also order the replacement of a new vehicle or a full refund of the consideration paid if the vehicle still exhibits defects despite numerous replacements of the defective parts and thorough testing by technicians, in addition to ordering compensation for the inconvenience and misery suffered by the complainant. This was laid down by the NCDRC in the case of *Mandovi Motors Pvt. Ltd. v. Pravenchandra Shetty* (2013).

However, the new vehicle cannot replace a vehicle that has been used many times. In the case of *C.N. Anantharam v. M/s Fiat India Ltd. and Ors.* (2010), the complainant demanded a replacement of the vehicle or a full refund of the purchase price along with interest. The Supreme Court dismissed the arguments made by the complainant and determined that simply replacing the damaged engine with a new engine would be sufficient. On similar grounds, the NCDRC, in the case of *M/s Tata Motors Ltd. v. Sharad and Anr.* (2016) ruled that rather than replacing the new vehicle, the old vehicle's defective parts must be repaired. In this particular

case, the vehicle of the complainant had certain defects but had been driven 90,000 kilometres.

Hence, it held that it would not be appropriate to replace the new vehicle because it will not be a new one anymore after being used multiple times. As a result, the NCDRC ordered an award of Rs. 80,000 as compensation for the mental agony caused to the complainant due to the malfunction of the vehicle since the day of purchase, but not the replacement of the defective goods.

Removal of deficiency in service

In accordance with Section 39(1)(f), the opposing party may be given a direction by the District Commission to correct any problems with the goods or services in dispute. It is pertinent to note that clause (a) of the Section also specifies the removal of defects in goods; however, there, the other party is required to do so if the appropriate laboratory has identified the defect or defects, whereas here, under clause (f), the District Commission is required to order the removal of those defects in these kinds of goods that do not necessitate analysis or testing by the appropriate laboratory. This not only applies to goods, but also to services that are demonstrated to be deficient.

Refund of the price paid for the defective goods or service

If one looks at the text under the heading “statement of objects and reasons” of the CP Act, in the 4th point, it was stated clearly that the Central Consumer Protection Authority (CCPA) was established to avoid consumer detriment by enforcing recall, refund, and return of products, etc. This was envisaged under Section 2(47)(viii) of the CP Act, 2019. This section specifies the eighth category of unfair trade practices i.e., denial to withdraw defective goods and deficient services and refund of the amount paid by a consumer. It is a new addition to the CP Act, 2019 that was not there in the CP Act, 1986. Additionally, as per Section 18(1)(b), the Central Authority is obligated to prevent unfair trade practices by ensuring that nobody engages in them. According to the said section, a trader or service provider is considered to have adopted an ‘unfair trade practice’ if they refuse to replace the defective goods or stop providing the deficient services and refuse to refund the consumer for the money paid for the defective goods or deficient services. The merchant or service provider must repay or refund the money in the manner he specified in the bill or cash memo, or within 30 days if there was no such specification in the bill or cash memo.

For a better understanding, let us take an example. K refuses to replace the poor-quality noodle

packets and their supplies, despite requests from consumers. Here, K is accused of using 'unfair trading practices'. In this instance, even if K agreed to take back the noodles which are not good for consumption, but did not give the consumer their money back, still once again K is said to be using 'unfair trade practices'.

Apart from the above-mentioned section, Rule 4(10) of Consumer Protection (E-Commerce) Rules, 2020 also prescribes a measure of refund requests for consumers. According to this rule, every e-commerce firm must carry out all reimbursements for consumer refund requests that have been approved in accordance with the rules established by the Reserve Bank of India (RBI) or any other competent authority under any relevant laws, within a reasonable time period, or as otherwise required by those laws.

On the contrary, when the complainant i.e., respondent in the case of M/s Sahara India Commercial Corporation Ltd. v. C. Madhu Babu (2011), reserved a flat with an advance payment of Rs. 28,050 and then cancelled it; he sought a refund of the amount paid. Since a condition of an agreement, which was signed by the complainant, barred the refund of advance payments, the appellant, a construction corporation, refused to issue such a refund. When the case reached the commission, the NCDRC ruled that the appellant was not required to refund the advance payment. According to the NCDRC, "When there is a written agreement between the parties, it is well settled that the consumer fora have to consider the relief in the light of such agreement and it is not open to them to add or subtract any of the conditions or words thereof while doing so." In light of this, consumers should be careful enough while signing an agreement. It is better to consult an expert and ensure that the consumer understands all the terms and conditions of the agreement or contract before signing such a document.

Refund of extra money charged

Charging extra amounts without informing the consumer that the products are being charged prior to the decision taken by the consumer amounts to 'unfair trade practice' according to Section 2(47) of the CP Act, 2019. Even if the seller stated that the extra money is being charged at the bottom of the advertisement in very small letters, it still regards as concealment and constitutes an unfair trade practice according to the facts and circumstances of the case.

In these scenarios where the consumer is being exploited due to the exercise of unfair trade practices by the seller or service provider, the consumer has the right to seek a refund of the extra money charged, which will be granted once the unfair trade practice is proven before an appropriate Consumer Commission.

In the case of M/s Dominos, Jubilant Foodworks Ltd. Through Manager v. Pankaj Chandgothia (2019), the complainant, Pankaj Chandgothia, purchased two regular pizzas through his driver. The other party, Dominos, charged Rs. 13.33 for the carry bag, i.e., packing material.

After looking into the facts and circumstances of the case, the Consumer Commission noted that the delivery of goods entails physically giving them from the buyer to the seller in a condition that allows for delivery, that is, the goods should be in a 'deliverable state' while packing them to protect them from the environment. In this way, the seller is responsible for funding or incurring any costs necessary to make the goods deliverable. It is appropriate to mention here

that Section 36(5) of the Sale of Items Act, 1930, states unequivocally that, until otherwise agreed, the seller is responsible for paying all costs associated with bringing the goods into a deliverable state and the burden of the costs should not be shifted to the consumer. Therefore, in accordance with this legal requirement, the seller in the present case, i.e., Dominos is responsible for paying all packing and other related costs to prepare the goods for delivery and has no right to charge the consumer for any costs incurred during the packing.

Hence, the Commission delivered the judgment in favour of the complainant by ordering the Dominos to stop the unfair trade practices of charging the consumers an additional fee for the carry bags; to give the complainant a "refund" for the Rs. 12 that was improperly charged for the said paper bag; and to give the consumer Rs. 1500 as restitution for harassment, for the suffering he has endured, and for court costs.

Recall or withdrawal of goods or services that are hazardous to life

According to Section 20(a) of the CP Act, 2019, the Central Authority may issue a directive for the 'recall' of goods or the 'withdrawal' of services that are dangerous, hazardous, or unsafe if it deems that there is enough proof of an infringement of consumer rights or an unfair trade practices. But in order to comply with the principles of natural justice and the audi alteram partem doctrine, the Central Authority must first give the person a chance to be heard before making any such order. It is also important to highlight here that, unlike in criminal law, the standard of proof required by this provision does not strictly demand 'proof beyond all reasonable doubts', but rather the 'preponderance of probabilities'.

Section 20(b), which might be referred to as an extension to clause (a), states that the Central Authority may mandate the 'refund' of prices to consumers of goods or services, thus recalling Section 20(a). Here too, the principle of audi alteram partem is followed.

Compensation for the loss or injury suffered by the consumer due to negligence of the opposite party

In the case of *United India Insurance Co. v. Jahangir Spinners (P) Ltd.* (1998), NCDRC held that the Consumer Protection Act, not the insurance contract, imposed liability for losses or damages incurred by consumers as a result of the negligence of a vendor, supplier, etc. That is, the seller or service provider must give compensation to the consumer for the loss or injury suffered by him or her.

According to Section 85(b) of the CP Act, 2019, the product service provider is liable for product liability claims if there was an act of omission, or a deliberate or 'negligent' withholding of information that led to injury, loss, or harm to a consumer.

Adequate cost of filing and pursuing the complaint

According to Section 39(1)(m) of the CP Act, 2019, the District Commission may order the payment of reasonable costs to the parties. The costs associated with travel, legal, and other ancillary expenses paid for pursuing the consumer complaint are provided under this provision, even though it has not been specified what kind of costs the District Commission shall order.

Grant of punitive damages

In most contract breach disputes, punitive damages are not granted unless the behaviour was so heinous that punishing the guilty party with punitive and/or exemplary damages was necessary. In the case of *M/s Magma Fincorp Ltd. v. Rajesh Kumar Tiwari* (2020), while some degree of speculation and/or estimation may be allowed, compensatory compensation must be evaluated taking into consideration relevant elements, such as the claimant's damage.

Also, the proviso to Section 39(1)(d) of the Consumer Protection Act of 2019 gives the District Commission the authority to award punitive damages in such situations as it thinks appropriate. Besides this, there is a separate chapter named 'offences and penalties' which prescribes different punishments for different kinds of offences. The same is given in the following table:

Redressal mechanism as per the Consumer Protection Act, 2019

All the measures stated above are just a few of the many available to a consumer. In addition to the abovementioned, the Consumer Protection Act also specifies the manner in which complaints must be made, the procedure that the Redressal Forums must follow in handling the complaints, and the kind of orders that specify any of the aforesaid remedies.

Different forums for a redressal mechanism

A three-tiered quasi-judicial system, known as consumer courts, has been established at the national, state, and district levels to provide simple, quick, and affordable redressal of consumer disputes under the CP Act. These tribunals are set up to provide free redress for consumer grievances involving any inferior products or services, including any that involve unfair or constructive business practices. The consumer dispute resolution system is made up of the following organisations:

- The District Consumer Dispute Resolution Commission, also known as the ‘district commission’ or, in short, DCDRC;

- The State Consumer Dispute Resolution Commission, also known as the ‘state commission’ or, in short, SCDRC; and
- The National Consumer Dispute Resolution Commission, also known as the ‘national commission’, or, in short, NCDRC.

To know more about powers, jurisdiction, composition and other things about consumer commissions at various levels, [click here](#).

How to file a consumer complaint

The complaint can be made without following any formal procedures. If someone feels that a retailer or manufacturer has taken advantage of them and wants to file a complaint with the consumer court, they can write the facts on a piece of plain paper. If his allegation falls within the category that requires a minimal sum of money in the form of a demand draft to be payable, attach the necessary documentation, such as the guarantee or warranty card and cash memo, a notice to the opposing party, and the required fees, along with the complaint, and submit it in the district forum. Also, no court fee is necessary to file a complaint with the District Forum, the State Commission, or the National Commission.

The complainant or his/her agent or any other authorised representative may physically file the complaint. The complaint can be addressed by mail to the appropriate Forum/Commission. It is not required to hire a lawyer. Even the consumer himself or herself or any consumer organisation can represent the matter before a consumer court.

Generally, a complaint should be resolved within 90 days of giving the other party notice. A complaint must be resolved within 150 days if a sample of any goods is needed for testing.

To learn more about the procedure for filing a consumer complaint, [click here](#).

Drawbacks of the Consumer Protection Act, 2019

Frivolous or vexatious complaints

It should be stressed straight away that the new CP Act, 2019, does not impose a penalty for the rejection of a complaint that the Consumer Commission determines to be frivolous or vexatious. Previously, if the consumer commission dismissed the complaint as frivolous or vexatious, there was a fine of up to Rs. 10,000 under Section 26 of the old CP Act, 1986. But, unfortunately, the new CP Act, 2019 did not have any such provision. This is the biggest drawback of the CP Act, 2019.

It is a fact that the CP Act, 2019, is extraordinarily drafted, which ensures that the interests of the consumer are safeguarded and preserved from all angles. But a consumer is not a victim all the time because every coin has two sides. A consumer may act as a victim, despite nothing such as an event occurring against his interests, and tries to take advantage of the Act by abusing its provisions, whose very purpose is to protect them.

The major purpose of the amendment to this Act is to provide a speedy dispute redressal system to an aggrieved consumer. But, on the contrary, if many frivolous and vexatious complaints are being piled up in consumer courts by the fake allegations by consumers, the genuine complaints will be pending in courts without a speedy resolution to the actual aggrieved consumer which is a

gross injustice to those. There is also a saying that 'justice delayed is justice denied'. This conveys that even if a delayed resolution is provided to an aggrieved party, it is not considered justice.

Therefore, it was necessary to include a provision for penalising those consumers who file a frivolous or vexatious complaint, which will serve as a deterrent, detriment, or prejudicial act to genuine complainants. Otherwise, it would lead to the filing of a sizable amount of frivolous complaints, resulting in a docket explosion, which eventually serves as an obstacle to the quick resolution of genuine complaints.

Complex legal process and delay in delivering justice

India currently has the largest consumer movement, and by virtue of the initiatives of consumer organisations, relevant protective laws and consumer courts have taken place. However, the

situation as it stands now is not particularly promising. Unfortunately, because the process is no longer simple, clear, and speedy in practice, consumer courts have turned into exact replicas of other judicial processes.

The consumer grievance process takes longer and is more complicated than what the law intended. The procedure entails hiring legal professionals, which is optional but still practically encourages the aggrieved party to do so, paying fees if necessary, waiting the required amount of time to file the case and appear in court, and completing other formalities like producing bills and warranty cards, among other things. In a nutshell, the legal procedures provided under laws are more complex in nature, and, hence, many consumers are not showing interest in filing consumer complaints and pursuing legal proceedings, in spite of suffering and exploitation, due to the time-consuming redressal system.

Recent developments around consumer protection

Consumer Protection Act, 2019

As you well know, the UN Guidelines for Consumer Protection, which the UN General Assembly unanimously accepted on April 9, 1985, served as the basis for the Consumer Protection Act of India, which was first enacted on December 24, 1986. In 1991, 1993, and 2002, the 1986 Act underwent brief amendments.

The UN General Assembly enhanced the consumer protection guidelines in 1989 and modified them in 2015 with the primary goal of raising awareness of the various ways that member states, corporations, and civil society can advance consumer protection in the context of both public and private goods and services.

Based on the aforementioned, India started the process to integrate best practices from other nations and bring about significant reforms to the Consumer Protection Law in the same year, i.e., 2015. The Parliament, however, was unable to approve it in that year itself.

Later, on July 8, 2019, a totally rewritten version of the Consumer Protection Bill was presented to Parliament. It was passed by the Lok Sabha on 30 July 2019 and by the Rajya Sabha on 6 August 2019. On 9 August 2019, the President of India gave his assent to the Bill, thereby making it the CP Act, 2019. The provisions of the Act, along with the rules and regulations made thereunder, came into force on July 20, 2020, and July 24, 2020, respectively.

Its impact on the medical profession

Given that healthcare was expressly excluded from the definition of “service” in the Amendment Act, i.e., the CP Act, it is clear that this rule had a significant impact on the medical discipline and the healthcare system. This provision exempts the doctors from responsibility for deficient services, and whether they were acting negligently is a moot point. A close reading of the law reveals that it includes the medical profession and health care services as well when it refers to services of any kind made accessible to potential consumers. The case of *Indian Medical Association v. V.P. Shantha and Ors.* (1995), settled by the Supreme Court in 1996, likewise required to be evaluated *de novo*, leaving the legal interpretation and judicial enunciations wide open.

Growing consumer movement

The Indian situation is marked by a surge in coordinated consumer movement initiatives to promote socially acceptable conduct and norms on the part of corporate organisations in response to growing legislation and judicial activism broadening the scope and relevance of social accountability.

Voluntary consumer organizations

In order to protect consumers’ interests, ‘voluntary consumer organisations’ are growing rapidly. The majority of these organisations work to advance consumer protection and education through a variety of strategies, including the representation of specific consumer issues.

While private individuals can empower themselves by becoming informed of their rights, obligations, and accessible legal recourse for upholding these rights, a lot is accomplished through joint action for strengthening the consumer movement by volunteer consumer organisations, by organizing workshops and advocacy initiatives on various consumer issues, as well as by education and power building of potential consumer.

More importantly, they are supporting, advising, and training individual consumers as they present their complaints and disputes before different customer dispute resolution forums. The organizations also work with the public to bring about public interest litigation on significant consumer issues and collaborate with individuals in collective class actions.

By creating suitable codes of conduct and corporate ethics, they are also effectively working as consumer groups with trade and industry organizations, such as chambers of commerce and federations, to ensure that consumers get a decent bargain.

Social responsibility and accountability of corporate

A number of other aspects of the community and industry interface have suddenly come into focus as a result of tragedies like the Chasnala coal disaster and the Bhopal gas tragedy, which left over 2,000 people dead and many more permanently disabled by noxious chemicals.

This has broadened the scope of the industry's social responsibility from the consumer to the community and from consumerism to voluntary social action. Citizen initiative and voluntary action on behalf of the entire community are prevalent and growing. The following examples show how the community in India is becoming more and more concerned.

- Baba Amte's call for a reconsideration of the Narmada Valley Project in light of its economic burden, environmental harm, human misery, and social impacts;
- The Bombay Natural History Society's (BNHS) opposition to the construction of any project across the Narmada; and
- Widespread protests against the Kaiga nuclear power plant and the COGENTRIX Project in Karnataka.

Despite the fact that consumption is escalating and becoming more aggressive, many business executives maintain that while they accept Corporate Social Responsibility (CSR), it is the job of the government to

- Offer social security and other services, allowing the corporate sector to focus on production; and
- If the government requires firms to fulfil social commitments, these requirements should be set forth in law rather than being left up to business and industry to determine.

Furthermore, the Consumer Education and Research Center (CERC) was founded as a milestone in encouraging volunteer efforts to enforce socially responsible business practices. Also, organizations like Citizens Against Pollution (CAP) and the Centre for Environment Concerns (CEC) are active in the majority of Indian cities and industrial hubs. These organizations defend the rights of uninformed consumers who suffer as a result of administrators' carelessness and heavy-handedness in supporting activities like major infrastructure projects.

Growing demand for international consumer law

In an increasingly globalised world with a deeply internationalized market, it is necessary that

the law, including consumer law, expand internationally and beyond the bounds of national jurisdictions.

A growing amount of work has gone into internationalizing consumer law. Dieselgate and Apple are only a couple of the recent, significant incidents involving international consumer law that simultaneously affected consumers in numerous jurisdictions and showed how important and necessary it is to have global consumer law. These scandals have also shown the growing relevance of international consumer law.

International Consumer Protection and Enforcement Network (ICPEN)

The International Consumer Protection and Enforcement Network (hereinafter referred to as “ICPEN”) is now the only international organisation devoted exclusively to the global factors of consumer law implementation among the existing systems and networks. It represents an actual worldwide network of agencies in charge of upholding consumer law globally.

ICPEN is a great illustration of a non-formal strategy for creating a forum for a multi-stakeholder debate as well as a road for cooperation among consumer protection authorities. Over 60 nations and international organizations with a stake in consumer law are represented in the network of consumer law authorities known as ICPEN. The number of nations using this network is expanding. The United Nations Conference for Trade and Development (UNCTAD) also participates actively in ICPEN as an observer organization.

Some of the largest international consumer markets, including the USA, Australia, Japan, the UK, and Canada, are represented by ICPEN. Despite its growing size, the network still only

includes less than one-third of all nations, raising serious doubts about its truly global nature. To make ICPEN a legitimate worldwide enforcement network, more work is required.

Rise of e-commerce and its legal implications in India

E-commerce is a term used to describe a system that facilitates sales of products and services via an electronic system. E-commerce enhances efficiency and expands options through competitiveness and a higher production process structure. Consumer protection, unfortunately, is a worldwide concern in e-commerce.

Hence, to stop unfair business practices and safeguard consumers’ interests and rights in e-commerce, the Consumer Protection (E-Commerce) Rules, 2020 were issued under the Consumer Protection Act, 2019 on July 23, 2020.

The new regulations reaffirm the online consumer grievance redress mechanism since protecting

consumer rights is crucial to the development of e-commerce. This increases online consumers' capacity to establish confidence and ensures their safety and security. However, the expansion of e-commerce in India will be fostered by judicial involvement and instructions that ensure the protection and safety of online consumers.

Shift to 'caveat venditor' from 'caveat emptor'

Initially, in any economy, the rule of caveat emptor i.e, let the buyer beware is prevalent. However, due to the advent of consumerism, consumer protection and related laws at the international and national levels, there is a paradigm shift from the rule of 'caveat emptor' to the rule of 'caveat venditor,' i.e., let the seller beware.

This shift is ascribed to an increasingly consumer-oriented economy where business transactions are promoted. It is believed that such a move will help strike the ideal balance between the rights and obligations of buyers and sellers.

To study more about the doctrine of caveat emptor and caveat venditor and its shift, [click here](#).

Laxmi Engineering Works v. P.S.G. Industrial Institute (1995)

The case of Laxmi Engineering Works v. P.S.G. Industrial Institute (1995) is a landmark judgement that made the understanding of the term 'consumer' easier. The Supreme Court not only interpreted the word 'consumer' but also provided appropriate definitions of other words

like 'commercial purpose', 'livelihood' and 'self-employment' whose interpretation is very essential to learn the exact boundaries of the term 'consumer'.

Facts of the case

The appellant, Laxmi Engineering Works, is a privately owned business that was incorporated as part of the Employment Promotion Program. It is listed as a small-scale industry with the Maharashtra Directorate of Industries. It received financial support from many sources, one of them being the Maharashtra State Finance Corporation, in the form of a term loan of Rs. 22.10 lakhs.

One day, Laxmi Engineering Works ordered a PSG 450 CNC Universal Turing Central Machine from the respondent, P.S.G. Industrial Institute, and requested to supply it on May 28, 1990. The appellant alleged in court that the respondent delivered the said machine six months after the agreed period, and that, too, was a defective one. Several flaws were discovered quickly after it was assembled and put into use, and the appellant informed the respondent of the same.

Although the respondent sent some people to fix the defects after prolonged contact between the parties, the machine was still unable to be restored to working order. The appellant claims that he was experiencing significant financial loss due to the malfunctioning of the machine. As a consequence, the appellant filed a consumer complaint with the Maharashtra Consumer Disputes Redressal Commission (MCDRC), demanding an amount of Rs. 4,00,000/- from the respondent.

Arguments before MCDRC

Before the State Commission, the respondent gave testimony and rejected the allegations of the appellant. The respondent also argued that the appellant is not a consumer as defined in Section 2(1)(d) of the CP Act, 1986 because he bought the machine for commercial use.

Judgments by MCDRC

The commission partially granted the demand of the appellant, ordering the respondent to pay the appellant a sum of Rs. 2.48 lakhs within 30 days; otherwise, the money would charge interest at an annual rate of 18%. Thus, the judgment was in favour of the appellant.

Then, the respondent was approached by the National Consumer Disputes Redressal Commission (NCDRC) through an appeal. The National Commission accepted the appeal brought forth by the respondent on the sole ground that the appellant should not be considered a 'consumer' as defined by the Act.

Observations and judgment by NCDRC

The National Commission observed, "From the facts appearing on record it is manifest that the complainant is carrying on the business of manufacture of machine parts on a large scale for the purpose of earning profit and significantly one single item of machinery in respect of which the complaint petition was filed by him before the State Commission itself is of the value of Rs. 21 lakhs and odd. In the circumstances, we fail to see how the conclusion can be escaped that the machinery, in question which is alleged to be defective was purchased for a commercial purpose."

As a result, the National Commission declared that the appellant does not qualify to be considered a 'consumer', and his complaint was not admissible before the State Commission.

Therefore, the decision of the State Commission was reversed and the petition for a complaint was rejected. The National Commission pointed out that the appellant is still entitled to seek his remedy through a regular civil action despite their judgment.

Later, the matter went to the Supreme Court of India due to the appeal filed by the appellant who

challenged the decision of the National Commission.

Issues of the case

- Whether the appellant in the present case is a consumer as defined in Section 2(1)(d) of the CP Act, 1986 or not?
- What do the ‘commercial purpose’ and ‘self-employment’, which are mentioned under the explanation clause of the subsection in the Act, mean?

Arguments before the Supreme Court

The appellant contends that the aforementioned machine cannot be characterised as having a ‘commercial purpose’ and that he cannot unquestionably be said to be engaged in the ‘on a large scale’ manufacture of machine parts for the purpose of making a profit. The appellant operates a modest business and bought the aforementioned machine to support himself. In addition to this, the appellant also submitted that his business is a privately held company owned by Shri Y.G. Joshi, an engineering diploma holder who wanted to establish a small business with funding from public financial institutions to support himself. The appellant stated that he had an established contract for the supply of specific parts needed for the company to manufacture cars and emphasised that he has no other business apart from this.

On the contrary, the respondent argued that the reason for which the appellant bought the aforementioned machine is clearly a commercial one, as held consistently over several years by the National Commission. The respondent further argued that there was a connection between the large-scale activity set out to make profits and the machine that was bought.

Observations by the Supreme Court

The Division Bench held that the appellant is not a ‘consumer’ and went on to provide a thorough understanding of the term ‘consumer’, especially in light of the terms ‘self-employment’ and ‘commercial purpose’. The judge noted that:

“The expression ‘resale’ is clear enough. Controversy has, however, arisen with respect to meaning of the expression ‘commercial purpose’. It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. ‘Commercial’ denotes ‘pertaining to commerce’ (Chamber’s Twentieth Century Dictionary); it means ‘connected with, or engaged in commerce; mercantile; having profit as the main aim’ (Collins English Dictionary) whereas the word ‘commerce’ means ‘financial transactions especially buying and selling of merchandise, on a large scale’ (Concise Oxford Dictionary).”

Here, the Supreme Court underlined the interpretation given by the National Commission that those buyers who purchase goods intending to use them for carrying out any activity on a large scale to obtain profit are not 'consumers'. After highlighting this, the Supreme Court further illustrated with an example, "a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for 'commercial purpose' would not yet take the purchaser out of the definition of expression 'consumer'."

However, the Supreme Court further explained by stating that "If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a 'consumer'." Also, if we look at the explanation clause, the definition of 'commercial purpose' is reduced to a factual issue that must be resolved in the context of each case. While deciding a case, it is important to consider the purpose of why the products were purchased, not the value of the products themselves.

Furthermore, the Supreme Court also noted that "The several words employed in the explanation, viz., 'uses them by himself', 'exclusively for the purpose of earning his livelihood' and 'by means of self-employment' make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood."

For example, a consumer is someone who buys an auto-rickshaw to drive personally to make a living, even if he takes help from one or two persons for operating the vehicle. Also, it should not be bought by anyone other than the person who is using the goods. By distinguishing commercial purpose from commercial activity, the meaning of the phrase 'for the purpose of earning his livelihood' is clarified and understood.

Judgment by the Supreme Court

The appeal was rejected without costs. Regarding the type and features of the equipment and supplies, it was determined that the appellant did not buy them for his own use or to support himself through self-employment, as previously described. As a result, this decision was consistent with earlier judicial decisions and the definition of 'commercial purpose' provided by the amending Act. The most important factor in determining whether a person qualifies as a consumer is whether the reason they purchased the goods was 'commercial' in accordance with the definition of 'consumer' in Section 2(d) of the Act.

The Court further held that the orders of the District Commission, the State Commission, and the

National Commission are final, as declared in Section 24, and cannot be questioned in a civil court. The issues decided by the said authorities under the Act cannot be re-agitated or questioned in a civil court.

Indian Medical Association v. VP Shantha and Ors. (1995)

In the landmark case of Indian Medical Association v. VP Shantha and Ors. (1995), the Supreme Court of India included 'medical negligence' and 'medical services' under the purview of 'deficiency' of service and 'service' respectively, thus, making the definitions of deficiency and service wide and exhaustive.

Facts of the case

Multiple complaints were brought to the consumer courts under the Consumer Protection Act of 1986, demanding compensatory damages due to the rise in medical negligence cases. There was uncertainty on whether medical facilities, hospitals, and doctors came under the definition of "service" in Section 2(1)(o) of the CP Act, 1986, classifying patients as "consumers" with the ability to file a claim for damages in consumer courts. These complaints were taken into account in a number of decisions made by several high courts and national consumer courts, which provided various, and contradictory views and decisions.

Due to no certain and unambiguous answer to the question and issues raised, numerous appeals, writ petitions and Special Leave Petitions challenging the contradictory verdicts of subordinate courts in front of the Supreme Court to clarify and give a certain interpretation for the questions raised. The Supreme Court had to handle a significant influx of SLPs. Therefore, a writ was filed in this PIL, in accordance with Article 32 of the Indian Constitution, asking the Supreme Court to determine the scope and jurisdiction of the Consumer Protection Act, 1986.

Issues of the case

- Whether the service provided at a hospital or nursing home by a medical practitioner qualifies as "service" under Section 2(1)(o) of the Act.
- Whether or not hospitals and doctors are covered by the Consumer Protection Act of 1986.
- Under what conditions a medical professional can be considered to be performing "service" under Section 2(1)(o) of the Consumer Protection Act, 1986.

Arguments

Respondent, the Indian Medical Association, argued that under Section 2(1)(o) of the Act, only vocational services are covered, not professional services and that the law makes a distinction between the two. Therefore, while being a professional service, the medical profession shouldn't be protected by the Act.

The respondent asserted that certain criteria can be used to classify a service as deficient under Section 2(1)(g) of the Act. These rigorous and constrained principles have less use in the field of medicine.

The respondent further contended that medical services are a type of contract for personal service, that falls within the category of exclusionary services since they are not covered under Section(1)(o) of the Act but are not a contract for service. And, hence, medical services are not considered services and are, therefore, not covered by the Act.

Observations

The Hon'ble Bench dismissed the claim of the respondent that medical services, being a professional one, are not included under the said section, stating that the Bolam test is sufficient to determine whether a medical professional was negligent in treating a patient.

Among other things, when it was asserted on part of the medical professionals that "the relationship between a patient and the doctor is of confidence and trust and, thus, it is in the form of a contract of personal service," the Supreme Court denied the assertions by noting that "...since there is no relationship of master and servant between the doctor and the patient, the contract between the medical practitioner and his patient cannot be treated as a contract of personal service but is a contract for services and the service rendered by the medical practitioner to his patient under a contract is not covered by the exclusionary part of the definition of 'service' contained in Section 2(1)(o) of the Act" while comparing "contract for personal service" and "contract of personal service."

By citing the case, i.e., Dharangdhara Chemical Works Ltd. v. State of Saurashtra (1956), which makes a distinction between a contract for services and a contract for services, the argument that medical services should not be considered services was refuted. Since there is no master-servant connection between the doctor and the patient, a simple fiduciary relationship cannot result in a contract of service.

The Supreme Court added, "The expression 'contract of personal service' in Section 2(1)(o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering

medical service to the employer.”

The Court also ruled that “Service rendered at a Government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of the expression ‘service’ as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be ‘service’ and the recipient a ‘consumer’ under the Act.”

Furthermore, the respondent also argued that since “service” does not include any reference to medical services, those services are not covered by the Act. This argument was rejected because the definition of service has three elements, namely the main part, the inclusionary part, and the exclusionary part. Although the definition’s inclusionary element has a larger scope and includes medical services, the primary section of the definition does not.

The Court concluded that medical services will be regarded as services in line with Section 2(1)(o) of the Act, and from this point on, the potential consumer shall be referred to as the consumer of medical services

Judgment

With this landmark judgment, in 1995, the Consumer Protection Act of 1986 was expanded to include medical services, which helped consumers who were the victims of medical malpractice receive more expeditious and affordable justice.

The definition of “service” as stated in Section 2(1)(o) of the Act would apply to services provided at a non-government hospital or nursing home where fees are required to be paid by those who can afford to pay and services are provided free of charge to those who cannot afford to pay, even though the services are provided to those who cannot afford to pay for such services. Under the Act, a free service would likewise qualify as a “service,” and the recipient as a “consumer.”

Hindustan Coca-Cola Beverages Pvt. Ltd. v. Purushottam Gaur and Ors. (2014)

In the famous case of Hindustan Coca-Cola Beverages Pvt. Ltd. v. Purushottam Gaur and Ors. (2014), a significant ruling was made regarding compensation to the consumer when a drink contains insects.

Facts of the case

The complainant went to the District Commission and claimed that the Coca-Cola company was

in charge of the sale of poor-quality drinks. For a deficiency in service, the complainant sought significant damages from the company.

In defence of itself, the company said that there was no proof that it had produced the alleged bottle. They said that the product is fake and that their packaging facility has the most recent technology and high standards of hygiene, so there is no chance that an insect could get inside the bottle. The District Commission rejected the case, but the State Commission upheld the appeal made by the complainant and awarded him Rs. 10,000 while charging the company Rs. 3,000 in expenses.

The inspection of the bottle reveals one huge insect (about 10 mm in size) lying on the surface of the container; two small insects and various insect body parts are floating in the fluid, according to a laboratory report that was also presented to NCDRC in this case.

The laboratory also noted in the report that several characteristics of the bottle in issue were distinct from those of a “Fanta” bottle bought from the market, but that in order to be certain, the laboratory would require bottle samples from the batch code displayed on the bottle.

Issues of the case

Did the company act negligently when creating both the bottle and the “Fanta” soft drinks?

Judgment

After carefully examining all the available evidence, NCDRC determined that the company failed to make any attempt to assist the laboratory staff and that no inquiries into the source of that bottle were made by the company. This bottle looks to belong to the Company, at least in the beginning.

The Court also stated that the evidence was in the favour of the coca-cola company, hence the revision petition was denied. The consumer who discovered insects in a “Fanta” bottle received

Rs. 10,000 in compensation from the NCDRC, which upheld the decision of the State Commission.

Spicejet Limited. v. Ranju Aery (2017)

The notable judgment in the case of Spicejet Limited. v. Ranju Aery (2017) answered a few crucial questions, like whether an online consumer can file a consumer complaint at a court that has jurisdiction over the area where part of the cause of action took place.

Facts of the case

The complainant, Ranju Aery, purchased flight tickets from the opposite party, M/s. Spicejet Ltd., through online over the website “Yatra.com” for travelling with her family from Kolkata to New Delhi on June 30, 2015. When the complainant and his family arrived at the airport situated in Kolkata at 1:30 p.m. to board the flight from Kolkata to New Delhi, which was supposed to depart at 20.40 hours, they were astonished to learn that the trip had been cancelled.

The complainant and her family were not given any other options by Spicejet Airlines for their flight to New Delhi. As a result, the complainant was forced to purchase tickets for a different flight from Kolkata to Mumbai, with another flight from Mumbai to New Delhi departing at 20.40 hours. The complainant paid Rs. 80,885 for the stated trip.

Hence, the complainant lodged the relevant consumer complaint. The complainant claimed that the other party had not provided a backup flight nor issued a price refund for the cancelled flight. They also requested orders from the court to the opposite party to repay the value of the cancelled flight ticket, which was Rs. 20,000, plus interest at a rate of 12% per year.

Additionally, they requested that the OPs give them guidelines on how to pay for the extra Rs. 80,885 that they had already paid for a different flight. In addition, the complainant asked for Rs. 22,000 as court costs and Rs. 1.5 lakhs as damages for mental agony.

Upon hearing the matter, the District Commission issued an ex-parte order in favour of the complainant and directed Spicejet Airlines to compensate the complainant Rs. 80,885/- after subtracting the expense of the flight tickets of the cancelled flight from Kolkata to New Delhi, with addition to interest at a rate of 9% per year from the cancellation date of flight until realisation. Additionally, they ordered Spicejet Airlines to pay Rs. 1.25 lakhs in damages for harassment and Rs. 10,000 for legal expenses.

Later, the airline filed an appeal to the State Commission against the ruling given by the District Commission, which resulted in upholding the previous decision. Hence, the opposite party approached NCDRC in a way of appeal.

Issues of the case

- Whether the petitioners were properly served in proceedings before the District Forum and whether the ex-parte order imposed against them is appropriate?
- Can a consumer who purchased through an online platform be allowed to initiate an action anywhere?

Arguments

The petitioner, Spicejet Airlines, argued that Gurugram has no jurisdiction to decide the present case, by citing Section 11 of the Consumer Protection Act, 1986, which stipulates that a consumer may file a complaint within the local jurisdiction of the place of residence, place of business of the defendant, or the area where the cause of action arises.

The petitioner further put forward the argument that the District Commission had made the decision without following the principles of natural justice, especially *audi alteram partem* because they had not been properly represented in the proceedings before the Commission. The decision of the District Forum, which was fully upheld by the State Commission, was consequently unlawful.

Moreover, the petitioner is willing to refund the price of the tickets for the said cancelled flight if that hasn't already been done. Additionally, they sought to revoke the compensation orders of Rs. 1.25 lakhs.

Observations

After examining the evidence submitted, the NCDRC stated that it is apparent that a notification was issued to the petitioner by registered mail on October 21, 2015, however, it wasn't returned until November 20, 2015, i.e., 30 days had passed after the notice was sent. The District Forum assumed that airlines had received notification in accordance with Rule 10(2) of the Consumer Protection Regulations, 2005. Furthermore, from Section 28A(3) of the Consumer Protection Act, 1986, NCDRC asserted that the District Forum correctly assumed that the airlines had not received adequate service because the registered mail notification sent to them had not been forwarded within the allotted 30 days. As a result, the District Forum was correct to move the *ex-parte* against the opposite party, i.e., Spicejet Airlines. Accordingly, there is no way to oppose the decision of the district forum on this basis.

Regarding the question of territorial jurisdiction, NCDRC observed that the State Commission has persuasively argued in the challenged order that a part of the cause of action originated in Chandigarh because the complainant's acceptance of the contract was transmitted to him via the internet at his place of business or residence when he purchased the travel tickets online. We

have no grounds to disagree with the finding of the State Commission that the Chandigarh State Commission had jurisdiction over the complaint on a territorial basis.

Regarding the justification of technical and operational flaws used by the opposite party, the NCDRC observed:

“From the facts and circumstances of the case, it is abundantly clear that the flight, which the

complainants were supposed to board, got cancelled, although all other flights from Kolkata airport were operational. The OP Airlines have not explained anywhere whether there were any genuine reasons for the cancellation of the flight. Merely taking the plea that there were technical and operational defects, does not cut much ice in view of the fact that the other flights were operating normally and hence, the general conditions at the airport or the weather conditions etc. were conducive to the operation of the flights. The OP Airlines have also not explained anywhere whether they took any concrete steps to take care of the passengers of their cancelled flight and to make arrangements for their travel by some alternative method. The deficiency in service on the part of the OP Airlines is, therefore, writ large on the face of it, and they are liable to compensate the complainant on this score.”

Judgment

The NCDRC rejected the arguments of the airline company and found that the airline had provided deficient service by cancelling the flight without providing a valid justification. Also, NCDRC observed that the entire family of the complainant was subjected to harassment as a result of the cancellation of the flight.

On appeal to the Supreme Court, the Supreme Court decided that consumers choosing to buy goods through online platforms may lodge a consumer complaint for deficiency of services before any consumer court.

Conclusion

Centre and State rules regulating selling and buying activities concerning consumer goods are known as consumer protection laws. Such laws prevent unfair trade practices which harm consumers, either physically or financially. These laws are intended to put common people i.e., consumers who buy goods or hire services on an equal footing with businesses or other people who conduct business frequently.

These laws, specifically the Consumer Protection Act in India, are preserving and protecting consumer rights to a much extent. However, consumers in India are still facing problems. Also, even after the amendment, the drawbacks and loopholes persist. Hence, the government should recognize this quickly and take steps accordingly