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“COMPARATIVE ANALYSIS OF CONSUMER PROTECTION ACT, 1986 & CONSUMER PROTECTION ACT, 2019”

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ABSTRACT

Since the past when person comes into existence, needs some basic amenities to live a life as a human and not mere as animal, as said in article 21 of the Indian constitution also. These basic amenities may be consisting of Food, cloth & shelter. And this continues to be required throughout the life of the person. Thus, we all are consumers in a basic sense. On the other hand, when we go to the Market to get the product which has utility for us, we expect some value for our money which we have paid to the seller. That value could be the right quality of the product acquired/purchased, or quantity, right price, right information of the goods purchased etc. We expect the sellers to fulfil their duty and meet all our legitimate expectations. But there may be instances where consumers aren't satisfied or get harassed or cheated by the sellers by way of hoarding, black marketing, blackmailing and so on. In addition to all these we live in a world where there is perfect competition, which also leads to unscrupulous practices of the suppliers or sellers. The government felt the need to protect the genuine and legitimate buyers from unscrupulous suppliers, and in furtherance of the same, they made certain laws like sales of goods act, dangerous drugs act, the agricultural produce act, the prevention of food adulteration act and many other, each having their own purpose of establishment. This article has focused and described the comparative analysis of both consumer protection act of 1986 & 2019.

Keywords: Consumer, Consumer Protection act of 1986 & 2019, Product, Services, Deficiency, Mediation, Grievance Redressal, Jurisdiction.

INTRODUCTION:

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

create a new support for the protection of the consumer, the Government of India on 9th August 2019 enacted the new legislature which is known as the Consumer Protection Act, 2019. The reason behind replacing the “1986 Act” with the “2019 Act” was the limited definition and scope of consumer interest and their rights. So to expand the definition of consumers and to give enhancement to the rights of consumers, the consumer protection act, 2019 being enforced.¹

Just to ease & simplify quick disposal of consumers cases, the Indian Government over the years has been amending the act three times; the Consumer Protection (Amendment) Act, 1991, The Consumer Protection (Amendment) Act, 1993, The Consumer Protection (Amendment) Act, 2002 but, there was the need of more exhaustive legislation to cure the exploitation of consumers and to protect their interests as these changes in acts were unable to provide appropriate remedies to them. To do so, the new act; the consumer protection act of, 2019 finally came into consideration.

HISTORICAL BACKGROUND:

The concept of consumer protection was in existence since then beginning of human civilization. Every business needs to superior consumer satisfaction which can be ensured only when the government takes responsibility to protect all consumers. Before 1986, consumers often used to face many issues like the product of low quality, not adhering to MRP, or if there is any adulteration, etc. In 1950, when the constitution came into force, the central government enacted multiple legislation's like-The Drugs Control Act, 1950, The Prevention of Food Adulteration Act, 1954, The Essential Commodities Act, 1956, The Trade and Merchandise Marks Act, 1958, The Monopolies and Restrictive Trade Practices Act, 1969, etc.²

Just to overcome the issues of consumers, to fulfil their needs, and protect their interests. However, because of the lack of redressal mechanism and limited access to deal with the grievances of consumers, none of the laws succeeded in fulfilling the interest of consumers.

Earlier, It took years to make aware to everyone regarding their rights and the issues facing. There was no special act for protecting consumers, the aggrieved party had to take a lengthy and expensive process just to initiate an action by filing a civil suit. As a result, the cost and time

¹ Business Studies. Senior Secondary. <https://nios.ac.in/media/documents/srsec319new/319EL24.pdf>

² Consumer Protection Act: Meaning and Importance <https://byjus.com/commerce/consumer-protection-study-materials/>

invested by the aggrieved party were not satisfactory to the compensation granted. These all-above-mentioned issues of consumers lead to a rise in the consumer protection act, 1986.

COMPARATIVE ANALYSIS OF CONSUMER PROTECTION ACT, 1986 & CONSUMER PROTECTION ACT, 2019³

Sr. No.	Key Points	CPA 1986	CPA 2019
1	Pecuniary Jurisdiction	District Forum- up to 20 lakhs, State Commission- from 20 lakhs to 1 crore, National Commission- from 1 crore & above	District Forum- up to 1 crore, State Commission- from 1 crore to 10 crore, National Commission- from 10 crore & above
2	MRP/Purchase Price	Earlier MRP was a criterion to decide Pecuniary Jurisdiction	Discounted price/ actual purchase price is the criterion
3	Territorial Jurisdiction	Where seller has office	Where complainant resides or works
4	Regulator	No provision	Central Consumer Protection Authority to be formed
5	Mediation	No provision	Court can refer for settlement through mediation
6	Appeal	30 days period was given to file appeal against the order of District Forum and 50% of award amount or Rs.25000/- whichever is less is to be deposited	45 days period and 50% of award amount
7	Unfair Trade & Practice	No provision	Power to State commission & National commission to declare any terms of contract being unfair to consumer, to null & void
8	E-commerce	No provision	All provisions applicable to direct seller has been extended to E-commerce
9	Review	District Forum had no power to review the matter	District Forum has power to review

3 COMPARATIVE ANALYSIS OF CONSUMER PROTECTION LAWS (1986 - 2019). 15 July 2021. <https://lawessential.com/miscellaneous/f/comparative-analysis-of-consumer-protection-laws-1986---2019?blogcategory=Miscellaneous#:~:text=In%20the%20Consumer%20Protection%20Act%2C%201986%20t here%20was%20no%20such,refer%20for%20settlement%20through%20mediation.>

A. LIABILITY OF PRODUCT MANUFACTURER UNDER THE CONSUMER PROTECTION ACT, 2019 (SECTION 84)

A product manufacturer shall be liable in a product liability action, if— (a) the product contains a manufacturing defect; or (b) the product is defective in design; or (c) there is a deviation from manufacturing specifications; or (d) the product does not conform to the express warranty; or (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.⁴

Chapter VI of the Consumer Protection Act afford a all-inclusive machine for claiming compensation under an action for product liability. It defines product liability as the “Responsibility of a product and manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold by deficiency in services relating thereto”.

In 2015, there was a case of excess content of lead in Maggie. According to a March 2019 recall, more than 50,000 Tiguan Volkswagen Golf, Jetta representations manmade from 2015 over 2019 are at hazard for tire catastrophes and clatters.

These two cases confirmation the deficiency of the old act in commerce with the subjects correlated to confident defective goods and services.

B. PROMOTION AND ADVERTISEMENT OF UNHEALTHY AND FATAL PRODUCTS (SECTION 89)

Alternative issue which could be decorated when it comes to state the cause for the prerequisite of new legislation is the upgrade and announcement of morbid and incurable products. We regularly see personalities promoting the sales of Gutka, tobacco, pan masala and many more unhygienic products. These types of false and misleading commendations and commercials can indirectly distress the right to choose of an individual, clearly submitted in CPA.

⁴ Product Liability under the Consumer Protection Act, 2019: An Overview. January 20, 2022. By Bishwajit Dubey, [Surabhi Khattar](#) & Ashutosh Singh. [https://corporate.cyrilamarchandblogs.com/2022/01/product-liability-under-the-consumer-protection-act-2019-an-overview/#:~:text=\(a\)%20The%20product%20contains%20a,conform%20to%20an%20express%20warranty.](https://corporate.cyrilamarchandblogs.com/2022/01/product-liability-under-the-consumer-protection-act-2019-an-overview/#:~:text=(a)%20The%20product%20contains%20a,conform%20to%20an%20express%20warranty.)

Misleading and false advertisements is one of the many aspects that were announced by the 2019 Act. The repealed Act did not deal with the perception of misleading and false advertisements.

Advertising is the promotion of a product to a viewership to fascinate assignment and sale of a merchandise, and has an impression on the interests of consumers. Regulation of food advertising methodologies is desirable to guarantee that the advertising strategies used are legitimate, and ethically express the detail affecting to the product, thus protecting the interests of consumers. Nevertheless there had been no unified statutory framework to legalize food advertising, the Consumer Protection Act 2019 ('CPA 2019') now affords for parameter of advertisements which 'mislead' consumers about food products. The Advertising Standards Council of India ('ASCI'), along with supplementary media authorities, legalize the advertising media pleased by supplying plans. The Food Safety and Standards Authority ('FSSAI') is a statutory body which cliques morals for food commodities, and issues protocols for their preparation and sale.

C. THREE TIER REDRESSAL MECHANISM

Section 11(1) of the 1986 Act stipulated that the District Forum shall have jurisdiction to entertain complaints where the "*value of the goods or services and the compensation, if any, claimed*" does not exceed rupees twenty lakhs. Similarly, jurisdiction for State Commissions under Section 17(1)(a) was set for disputes between twenty lakhs and one crore; and National Commission for Disputes Redressal Commission ("NCDRC") under Section 21(a) for disputes valued at one crore and above.

The government has Circumstance a Three tier Redressal mechanism aimed at the prompt and reasonable justice to the consumers. These Three were format at District, state and national level, with their jurisdictions. Jurisdictions are as follows:

Under the Consumer Protection Act, 2019 which came into consequence from July 20, 2020, the pecuniary jurisdiction of the consumer courts was noticeably improved. **Section 34** of the 2019 Act delivers that "*...the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees...*" Similarly, **Sections 47 and 58 of the 2019 Act** afford that: (1) the State

Commissions shall have jurisdiction for disputes whose value exceeds INR 1 crore but remains less than INR 10 crores; and (2) the NCDRC is to have jurisdiction for disputes which are valued over INR 10 crores. Though, the effect of the 2019 Act is forthcoming, which means that already pending cases before the consumer courts shall not be shifted to the troubled forums per the reviewed jurisdiction.

There was no distinct regulatory body in 1986 legislation, but there is a central consumer protection authority to be fashioned.

D. MEDIATION UNDER THE CONSUMER PROTECTION ACT, 2019 (SECTION 74)

There was no legal provision for mediation in the old legislation however bestowing to the new legislation, courts can permit settlement of disputes complete mediation too.

The State Government will launch, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State. (2) The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches. (3) A consumer mediation cell shall consist of such persons as may be prescribed. (4) Every consumer mediation cell shall maintain— (a) a list of empanelled mediators; (b) a list of cases handled by the cell; (c) record of proceeding; and (d) any other information as may be specified by regulations. (5) Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the method specified by regulations.⁵

E. E-COMMERCE

There was no legal provision for E-commerce in the old law making, however all rules of direct selling are prolonged to e-commerce.

⁵ <https://www.aaptaxlaw.com/cpa-2019/section-74-75-76-77-78-79-80-81-consumer-protection-act-2019- chapter-v- mediation.html>

Chapter 5 Section 74 of the Consumer Protection Act, 2019 states that a Consumer Mediation Cell shall be recognized by the Central Government at the national level and every state government shall create Consumer Mediation Cell exercise within the jurisdiction of that state. The mediator designated to carry out the mediation shall comportment it within such stretch and in such method as may be itemized by regulations.

Section 75 of the Act consultations about the empanelment of the mediators. It conditions the qualifications, footings and settings of service, the procedure for hiring, and the fee allocated to the empanelled mediators.

It is the burden of the mediator to release certain facts such as; any individual, economic or proficient in the effect of the consumer dispute, the surroundings giving intensification to their liberation or discharge and any other compulsory information for the protection of consumer rights.

F. PROVISIONS UNDER IPC

The new Consumer Protection 2019 act, while has a number of recently made provisions, one of the foremost changes being illegalization of certain acts under IPC. Prior the remedy provisions were provided with respect to. civil remedies only.

Adulteration of food and drugs can be apportioned with under the Indian Penal Code , under section 272 , 273 , 274 , 275.

Section 272 as it says for adulteration of food or drink intended for sale -Whoever adulterates any artefact of food or drink, so as to make such article poisonous as food or drink, planning to sell such article as food or drink, or expressive it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of moreover description for a term which may extend to six months, or with fine which whitethorn extend to one thousand rupees, or with both.

Section 273 as it says for sale of noxious food or drink -Whoever sells, or offers or disclosures for sale, as food or drink, any piece which has been rendered or has become noxious, or is in a state incapable for food or drink, knowing or partaking reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of moreover description for a term which may extend to six months, or with fine which may encompass to one thousand rupees, or with both.

Section 274 as it says for adulteration of drugs -Whoever contaminates any drug or medical preparation in such a manner as to reduce the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal determination, as if it had not endured such adulteration, shall be punished with imprisonment of whichever description for a term which may extend to six months, or with fine which might extend to one thousand rupees, or with both.

Section 275 of IPC as it says for sale of adulterated drugs- Whoever, expressive any drug or medical preparation to have been adulterated in such a manner as to decrease its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as untainted, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, will be punished with imprisonment of either explanation for a term which may extend to six months, or with fine which may cover to one thousand rupees, or with both.

In addition to these provisions under IPC, Chapter VII of the Act affords for penalties, including imprisonment vacillating from up to six months and extending to life imprisonment if the defective goods or services centrals to death of the consumer.

LANDMARK JUDGMENTS

1. **Horlicks Ltd. v. Zydus Wellness Products Ltd.**⁶

In this case, both revelries are manufacturers of nutritional drinks, though, Zydus advertised a television commercial trivialising the products of Horlicks Ltd. The commercial was actuality broadcasted in countless languages plus English, Tamil and Bengali. Consequently, the Delhi High Court trusted on various judgments on misleading advertisements, belittling and law governing the publication of advertisements on television and held that the advertisement is disapproving as it does not afford any concrete proof regarding the quality of the product. Further, electronic media shrubberies an impression on the minds of the viewers thus, these types of advertisements would not only be unfavourable to the consumers but also the complainant would agonize irretrievable damage.

2. **Veena Khanna v. Ansal Properties & Industries Ltd, NCDRC**⁷

In this case, the complainant presented to purchase a flat from the respondent which the respondent arranged to deliver on 1.6.1999 through a letter. But, the flat was not constructed indoors the quantified date and hence it was not delivered. For such deficiency in services, the complainant commanded the refund of the deposited amount with interest at the rate of 18% pa which was repudiated by the reverse party.

The National Commission pragmatic that outstanding to delays in construction and delivery of possession it is quite problematic for a consumer to purchase a flat at market price. The National Commission quantified that it is the obligation of the State Commission to through the builders to deliver the possession of the flat as soon as it is accomplished and the complainant should be bestowed appropriate compensation for the delay in construction. The complainant just appealed the repayment amount before the State Commission, but the case was incomplete before the commission for five years and throughout that time there was a tremendous rise in the market prices of the immovable property. The National Commission further detailed that it was the duty of the State Commission to unswerving the respondents to deliver the possession of the flat or any other flat of comparable size to the complainant with apposite compensation, due to the delay in delivering the possession within the specified time. Or, adequate compensation ought to have been provided to the complainant so that they could purchase a new flat of the same size at the prevailing market rate in that same locality.

3. **Sapient Corporation Employees v. Hdfc Bank Ltd. & Ors.**⁸

In this case, a consumer complaint was filed by Sapient Corporation Employees Provident Fund Trust against HDFC bank Ltd. The complainant demanded that OP-Bank has dedicated deficiency of services by withdrawing the account of the Complainant. The court in this case held that there was no deficiency of service on the part of OP-bank and the arguments pleased by the complainant are unfounded. A behaviour that imitates to the direction of regulatory authority cannot be said to be negligence or service deficiency.

⁶ 14 May, 2020

⁷ 9 July, 2007

⁸ 1 November, 2012

CONCLUSION

The Consumer Protection Act has ended up being some support to the shoppers and shielded them from being misused in the possession of tremendous organizations and well-known brokers. The merchants and the organizations are as yet chipping away at how to make marvellous benefits and one of the ways is by mistreating the buyer. Associating to this the Legislature and the Judiciary are making fluctuations in the demonstration now and again however the customer himself should be vigilant and alert individuals on the lookout.

The Act is a welcome interchange as it looks to cover the omissions of the old Act and it is being vacant during a pivotal stage wherein buyers and their freedoms should be ensured as the worldwide business sectors are turning out to be increasingly more shopper driven. The Act tops more force on the District Commission, State Commission while moreover informing their separate financial locales subsequently weakening the accountability of the National Commission. With the accomplishment of the activities of the Act, the mainstream expression 'purchaser be careful' may be succeeded to 'merchant be careful' or 'producer is careful' if they are institute in refutation of the Act since the assurance that is being offered to the customers.

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