



**ORIGINAL RESEARCH PAPER**

**Law**

**NEO-CONSUMERISM AND LAW**

**KEY WORDS:** Consumer, jurisdiction, council, dispute, redress, penalty

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**ABSTRACT**

Whole the world has become a market place. The protection or promotion of the interests of consumers has become a new focus and function of law. Consumerism is the design that escalating consumption of goods and services purchased in the market commensurate always with the desirable goal and that a person's wellbeing and happiness depends fundamentally on obtaining consumer goods and material possessions within the novel legal parameter stepping a step towards the neo-consumerism. Yet another aspect of Consumerism lies in the fact that the significant component of the concept of supply and demand involves the supply of goods and services along with the demand or consumption of goods and services by individual consumers. When the market allows the consumer for a large variety of goods and services, it improves the quality of life for consumers in particular and the people in general. This paper is a portrayal of the neo-consumerism and law depicting the subject of the study as an important social and economic organizing force and as a key component affecting the production of things which can only be understood by analyzing its legal relationship to consumerism and also how the high art architecture itself has in many ways become a consumerist commodity itself. In sum, the objective of this paper is to seek the relation between manufacturer, seller and buyer of the neo-consumerism and how the new legislation regulates the interplay of these factors to cope with unsustainable consumption practices.

**INTRODUCTION:**

The Consumer Protection Bill, 2019, having been introduced in the parliament by the Minister of Consumer Affairs, Food and Public Distribution, Late Ram Vilas Paswan, was passed by the Lok Sabha on Jul 30, 2019, by Rajya Sabha on Aug 06, 2019 and having received the assent of the President on 9th August, 2019/Shravana 18, 1941 (Saka), was notified on 15<sup>th</sup> July 2020 and brought in to force from 20th July 2020. Repealing more than three-decade-old law of Consumer Protection Act, 1986, the new Act has come to provide for protection of the interests of consumers and for the said purpose, to establish authorities for *timely* and *effective* administration and settlement of consumers' disputes with innovation and conventions with a view to increasing efficiency; to modernize thereby the law relating to consumer protection and to enlarge the scope of the existing law and make it purposefully effective by replacing the old Act on the subject by enchanted legalism with apposite suitability to muddle through the emerging consumerism. It has provided for establishment of consumer councils etc to settle consumer's grievances and matters connected there with it. This Act was enacted basically to resolve a large pendency of consumer complaints in Consumer Forums and Courts across the country. The Act defined the jurisdiction of the Consumer Disputes Redressal Commission (CDRCs). Under the new Act the National CDRC is empowered to hear complaints worth more than Rs. 10 crores and the State CDRC was given jurisdiction for the value of more than Rs 1 crore but less than Rs 10 crore. This empowered the District CDRC to entertain complaints where the value of goods or service is up to Rs 1 crore.

**Shortcomings of the 1986 Act:**

The Consumer Protection Act, 1986 (old Act) came into force in 1986 to protect the interests of consumers in India for the first time. This Act gave tranquil and quick advantages to consumer complaints and helped safeguard their rights. Consumers could address insufficiency and imperfections in various goods and services and gain compensation for the same. It covered goods and services in public, private, or cooperative sectors and provided a platform for any consumer to file a complaint which would be redressed by the

Consumer Forums. The aim of the Act was to protect the interest of the consumers. But the Act was found out-dated in the fastest moving society with the advent of e-commerce. The Consumer protection Act, 1986, supplied provisions insufficient to the demand for protection of consumers' interest which may be summed up as follows:

- The 1986 Act didn't allow a consumer to move towards the Consumer Forum, if they had another solution or remedy to the problem/deficiency under law.
- It was piteous that a consumer could only approach the Forum, if he suffered a loss or damage due to any unfair trade practice or a deficiency in service.
- The Act dealt with dangerous or hazardous goods but failed to impose any liability for the supplier of such goods.
- It also didn't detail on safety requirements and permitted levels of hazardous substances in goods.
- Over a period of time, there has been progression in technology and with the advent and growing popularity of e-commerce and d-commerce, as an additional manner of conducting business, the changes to the existing legislation became imperative to protect consumer interests under these new modes of business.
- The old Act was lacking provision to deal with electronic goods or technological goods and these modern forms of business transactions.
- The 1986 Act was silent about the power of Forums to grant interim injunctions, means, there was no power to restrain the wrong doer during the entire pendency from doing anything detrimental to the interest of the consumer.
- The Forums lacked power to take up cases *suo-moto*.
- The average consumer spending power has increased and hence it was important that the Forums be given higher pecuniary jurisdiction to avoid crowding and pendency in other courts. The District CDRC is now empowered to entertain complaints where the value of goods or service is up to Rs 1 crore.

For the above stated reason, a complete overhauling of the Act was the need of the hour to cope up with the ongoing and

upcoming trend of technology and technology driven services.

The Act was good to address consumer grievances but had the above weaknesses and hence needed to be amended to suit the existing changes in business models.

The features of the new Act are as under:-

**Definition of the term Consumer:**

As per the new Act; a person is called a consumer who buys any goods or hires or avails of any service for a consideration but does not include a person who obtains such goods for resale or avails of such service for any commercial purpose. This definition covers all types of transactions i.e. online and offline.

However, use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment is not commercial purpose.

It is made clear that the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

**Consumer Rights:**

- the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- the right to consumer awareness.

**Consumer Protection Councils (CPC):**

With the objects of rendering advice on promotion and protection of the consumers' rights under this Act, provisions have been made for establishment of Central Consumer Protection Council known as 'Central Council', State Consumer Protection Council known as the 'State Council' and District Consumer Protection Council to be known as the 'District Council.' The three tier council system is there to take care of the interest of consumers at various levels timely, effectively and most importantly, to the best satisfaction of consumers by a strategically systematic manner.

**Central Consumer Protection Authority (CCPA):**

The act has the provision of the Establishment of the CCPA which will protect, promote and enforce the rights of consumers. The CCPA will regulate cases related to unfair trade practices, misleading advertisements and violation of consumer rights.

The CCPA will have the right to impose a penalty on the violators and passing orders to recall goods or withdraw services, discontinuation of the unfair trade practices and reimbursement of the price paid by the consumers.

The Central Consumer Protection Authority will have an investigation wing to enquire and investigate such violations. The CCPA is to be headed by the Director-General.

**Prohibition and penalty for a misleading advertisement:**

The Central Consumer Protection Authority (CCPA) will have the power to impose fines on the endorser or manufacturer up to 2-year imprisonment for misleading or false advertisement (Like Laxmi Dhan Warsha Yantra). Worth to mention that repeated offense may attract a fine of Rs 50 lakh and imprisonment of up to 5 years.

An advertisement is misleading if it involves false, misleading or deceptive information that is likely to cause the average consumer to act in a way they might otherwise not. Advertising may also be considered misleading if important information that the average consumer needs to make an informed decision is left out. Misleading advertising covers claims made directly to consumers by manufacturers, distributors and retailers, as well as in advertisements, catalogues, websites etc.

**Consumer Disputes Redressal Commission:**

The Act has the provision of the establishment of the Consumer Disputes Redressal Commissions (CDRCs) at the national, state and district levels.

The CDRCs will entertain complaints related to:-

- Sale of defective goods or services
- Unfair or restrictive trade practices
- Overcharging or deceptive charging
- Sale of hazardous goods and services which may be hazardous to life.

**Jurisdiction under the Consumer Protection Act, 2019**

The Act has given the power to the Consumer Disputes Redressal Commissions (CDRCs) as below:-

- The National CDRC will hear complaints worth more than **Rs. 10 crores**. (Earlier it was for a claim above 1 crore).
- The State CDRC will hear complaints when the value is more than **Rs 1 crore** but less than Rs 10 crore. (Earlier it was for a claim that exceeded 20 lakhs but didn't exceed 1 crore rupees).
- The District CDRC will entertain complaints when the value of goods or service is up to **Rs 1 crore**. (Earlier it was up to an amount that didn't exceed 20 lakhs).

**Commencement of E-filing:**

Under the Consumer Protection Act 2019, E-commerce transactions are included for adjudication under direct sales. It provides agility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of consumer. It was not so in the old Act. It was contrarily necessary to file complaint at the place of work or business of the opposite party. The new Act enables consumers to file complaints electronically besides hearing and/or examining parties through video-conferencing. This method is certainly going to reduce inconvenience for the consumers, more particularly, those suffering from physical disability.

The New Act provides consumers to file complaints electronically or through the process of E-filing. As a step towards new consumerism, the proceedings and Evidence can now be done through video-conferencing in so doing to give procedural ease and reduce hassle for the consumers. Further, a consumer can also file the complaint from wherever he resides rather than relying on territorial jurisdiction pertaining to the other party.

**Inclusion of Unfair Trade practices:**

The 2019 Act introduces Unfair Trade Practices definition, and gives privacy to Consumers for information they share in confidence. Any disclosure has to be made in accordance with the provisions of any other law.

**Procedure for Appeal altered:**

The Opposing Party has to deposit 50% of the amount ordered by the District Commission before filing an appeal to the State Consumer Disputes Redressal Commission, as opposed to the earlier maximum amount of Rs. 25,000/-, as the old ceiling has been made redundant.

**Inclusion of E-commerce transactions:**

The New Act has widened the definition of 'consumer'. The definition now includes any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. The earlier Act did not specifically include e-commerce transactions.

**Mediation as an ADR:**

Under the 2019 Act Mediation has been introduced as an alternate mode of dispute resolution. For the attainment of the said purpose, the State Government is to establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State and the Central Government, in the like manner, to the National Commission and each of the regional Benches.

Every consumer mediation cell shall maintain—

- a list of empanelled mediators
- a list of cases handled by the cell
- record of proceeding, and
- any other information as may be specified by regulations.

All the consumer mediation cells are to submit quarterly reports to the District Commission, State Commission or the National Commission to which it is attached, in the prescribed manner.

In cases where the consumer disputes could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.

**Product Liability:**

Product liability strictly applies to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller. Such action may be brought by a complainant against a product manufacturer or a product service provider or a product seller for any harm caused on account of a defective product.

A product manufacturer shall be liable in a product liability action, under any of the following cases, if—

- the product contains a manufacturing defect
- the product is defective in design there is a deviation from manufacturing specifications
- the product does not conform to the express warranty
- the product fails to contain adequate instructions of correct usage to prevent
- any harm or any warning regarding improper or incorrect usage.

To ensure glistening of neo-consumerism, a product service provider shall be liable in a product liability action, under any of the following cases, if—

- the service provided by him was illegally faulty or imperfect or deficient or inadequate in quality, nature or manner of performance.
- there was an act of omission or commission or negligence or conscious withholding any information causing harm.
- the service provider omitted to issue adequate

instructions or warnings to prevent any harm.

- there was mismatch between the service and the express warranty or the terms and conditions of the contract.

However, the imposition of liability in certain cases, as discussed above, are subject to certain exceptions enumerated in the Act which may be taken as defense.

**Augmented Penalties:**

Failure to comply with any direction of the Central Authority under shall incur penal liability of imprisonment for a term which may extend to six months or with fine which may extend to twenty lakh rupees, or with both.

As a concrete step towards protection of neo-consumerism, in the new Act, the CCPA imposes a penalty of up to Rs. 1,000,000 on a producer or an endorser, for a false or deceiving advertisement, and a sentence for imprisonment for up to 2 years is provided for. A repeat offender may get penalized Rs. 5,000,000 and face imprisonment of up to 5 (five) years.

Another key component of the sanctioning part of the Act is that, if any person, by himself or by anyone else, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act—

- does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees
- causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees
- causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and
- results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

Out of the above mentioned cases, some are made cognizable and non-bailable. That apart, the court may, in case of first conviction, suspend any license issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the license.

**Cases on the New Consumer Act:**

In the case of Horlicks Ltd. v. Zydus Wellness Products Ltd., the Delhi High Court, relying on various law and judgments on the issue, passed an interim order restraining Zydus from telecasting its advertisement comparing Complian to Horlicks on the grounds that the same was misleading and disparaging.

In the case of Pepsi Co. Inc. v. Hindustan Coca Cola Ltd., it was held that certain factors had to be kept in mind while deciding the question of disparagement. Those factors were:

- (i) Intent of the commercial,
- (ii) Manner of the commercial, and
- (iii) Story line of the commercial and the message sought to be conveyed.

These factors were amplified or restated in the following terms:

- “(1) The intent of the advertisement – this can be understood from its story line and the message sought to be conveyed.
- (2) The overall effect of the advertisement – does it promote

the advertiser's product or does it disparage or denigrate a rival product?

In this context it must be kept in mind that while promoting its product, the advertiser may, while comparing it with a rival or a competing product, make an unfavorable comparison but that might not necessarily affect the story line and message of the advertised product or have that as its overall effect.

(3) The manner of advertising – is the comparison by and large truthful or does it falsely denigrate or disparage a rival product? While truthful disparagement is permissible, untruthful disparagement is not permissible.”

In the case of Dabur (India) Ltd. v. Colortek (Meghalaya) (P) Ltd., the Delhi High Court, on the basis of the law laid down by the Supreme Court, decided on the principles governing disparagement in the advertisements and held:

- An advertisement is commercial speech and is protected by Article 19(1)(a) of the Constitution.
- An advertisement must not be false, misleading, unfair or deceptive.
- Of course, there would be some grey areas but these need not necessarily be taken as serious representations of fact but only as glorifying one's product.

To this extent, the court opined, the protection of Article 19(1)(a) of the Constitution is available. However, if an advertisement extends beyond the grey areas and becomes a false, misleading, unfair or deceptive advertisement, it would certainly not have the benefit of any protection.

**Conclusion/Suggestion:**

Since consumers cannot scrutinize the goods in move-away selling, the vendor has all-inclusive obligations to disclose information about his products and the consumer has the right of pulling out in many cases, which is really a good protection for the consumer. The 2019 Act establishes central regulator viz the Central Consumer Protection Authority (CCPA), to tackle issues related to consumer rights, unfair trade practices, misleading advertisements and imposes penalties for selling damaged or simulated products. Therefore, it is believed that the new Act comes with stringent measures and stiffens existing rules to safeguard the consumer. Law grows with the growth, and strengthens with the strength of the people. It has a function. The new Consumer Protection Act, 2019 is a commendable functional step to cope with neo-consumerism. The age old concept of caveat emptor is now transmuted to caveat venditor meaning of which is let the seller beware. The person selling goods is accountable for providing information about the goods to the seller. It is a counter to caveat emptor. The seller is now in a legal obligation to take the buyer into his confidence. On the other hand, the buyers should be aware of their rights as recognized by this Act. Awareness of the available rights and enforcement thereof will certainly put a genuine pressure on the sellers to be conscientious so that it will create a healthy ambiance in the day to day selling and buying functions making the objective of the Act meaningful.

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