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THE CONSUMER PROTECTION ACT, 2019: A COMPARATIVE STUDY WITH THE CONSUMER PROTECTION ACT, 1986

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Dr. Sanjay Sindhu Professor, Department of Laws, Himachal Pradesh University, Shimla.

Niraj Negi Ph.D. Research Scholar, Department of Laws, Himachal Pradesh University, Shimla.

ABSTRACT

The Consumer Protection Act, 1986 was benevolent legislation to protect consumer rights and interests. It has introduced the three-tier consumer courts at the district, state, and national levels. This Act has protected consumer interests and rights for three decades with certain limitations. With the advent of the internet and technology, the marketplace has also changed. Consumers are more prone to risk and exploitation in this digital age. By enacting the Consumer Protection Act, 2019 these issues are addressed by the legislature. The new Consumer Protection Act, 2019 is enforced prospectively by repealing the Consumer Protection Act, 1986. The reforms under the new Act were much needed. It has expanded the ambit of consumer protection in India. Consumers must be made aware of their rights under the new Act. This article aims at analyzing the Consumer Protection Act, 2019. This paper also highlights the changes done in the new Act in comparison with the Consumer Protection Act of 1986.

1. INTRODUCTION

The Consumer Protection Act of 1986 was regarded as social welfare legislation as it protects the interests of the consumers. It was umbrella legislation that strengthened the consumer and consumer movement in the country. It also became a model for consumer protection legislation in developing nations. Consumer marketplaces for products and services are completely transformed after this legislation was enacted. Consumers now have a plethora of new options and opportunities due to technological advancements, the emergence of global supply chains, and the rise of international trade. With digitalization, consumers are more prone to risks and new challenges for consumer protection with the development of technology. The Consumer Protection Act, 2019 is enacted to address these new challenges in the digital age as well as the interests of consumers. It has addressed the various flaws in the previous Act.

2. Consumer Protection Act, 2019

The Consumer Protection Act of 2019 repeals the previous legislation. Certain sections of this Act came into effect on 20 July 2020 and certain provisions on 24 July 2020. It consists of VIII chapters and 107 sections. This Act applies to the whole of India. The Act's preamble states "to provide protection of the interests of the consumers and to establish authorities for timely and effective administration and settlement of consumer disputes". This Act creates the Central Consumer Protection Authority as a regulatory body to advance, safeguard, and uphold consumers' rights collectively. There is a clear shift from the old doctrine of *caveat emptor* to *caveat venditor* as the provision for product liability is included. The unfair trade practices and fraud done by the sellers, manufacturers and service providers are also penalised. Under this Act, there is no penalty for dismissal of frivolous or vexatious complaints earlier there was a provision for the penalty of rupees 10,000 for dismissal of the complaint.

In *Neena Aneja v. Jai Prakash Associates Ltd. AIR 2021 SC 1441* the Supreme Court held that proceedings commenced before the enforcement of the Consumer Protection Act, 2019 will continue to be heard by the Consumer fora established under the old Act and will not be transferred in light of pecuniary limits under the new Act.

3. Salient Features Of The Consumer Protection Act, 2019 In Comparison With The Consumer Protection Act, 1986

The Consumer Protection Act, 2019 has broadened the scope and a holistic approach is adopted for the protection of the consumer. The Consumer Protection Act, 2019 has included definitions of advertisement, consumer rights, design, direct

selling, e-commerce, electronic service provider, establishment, endorsement, express warranty, injury, harm, misleading advertisement, product, product liability, product liability action, product manufacturer, product seller, product service provider, regulations, unfair contract, etc. These term were not defined in the old Act. The definition of "consumer" under section 2(7) is widened by including both online and offline consumers. Now, the term "consumer" is extended to the digital products bought or sold over a digital network. Earlier the term consumer was limited only to goods and services. Now e-commerce transactions are also included. The definition of "goods" under the new Act is broadly defined. Every type of movable property is included in the definition, which also includes "food" as defined by the Food Safety and Standards Act of 2006. Earlier it was referred to goods as defined under the Sales of Goods Act, 1930. In addition, the definition of "deficiency" in section 2(11) is amended to include the following new sub-clauses:- (i) any act of negligence, omission, or commission by such person that results in loss or harm to the consumer (ii) any information that person knowingly withholds from the consumer.

3.1 Consumer Rights

The term consumer right is defined under section 2(9) of the new Act. The Act provides inclusive definition of consumer rights as follows:

i. Right to be protected: the right to be protected from the marketing of goods, products and services that endanger life and property.

ii. Right to be informed: consumers have the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services so that they may be protected against unfair trade practices.

iii. Right to be assured: the right to be guaranteed access to a variety of goods, products, or services at reasonable prices, whenever possible.

iv. Right to be heard: the right to be heard and the assurance that their interests will be taken into account at the proper forums.

v. Right to seek redressal: the right to seek redress against unfair trade practises, restrictive trade practises, and consumer exploitation.

vi. Right to consumer awareness.

Earlier under the old Act, the rights of consumers were provided under section 6 which included the right to education. The right to consumer education is deleted under

the new Act.

3.2 Central Protection Councils

To protect and promote consumer rights Central Protection Councils will be established at the Central, State and District levels. The Central Protection Council will serve as an advisory body under the new Act, as compared to acting as a regulatory body under the Consumer Protection Act, 1986.

3.3 Central Consumer Protection Authority

The Central Government is empowered to establish the Central Consumer Protection Authority under the Consumer Protection Act of 2019 to promote, protect, and enforce consumer rights. It will address issues such as consumer rights violations, unfair trade practises, and false or misleading advertising. The authority is also given broad powers to take *suo motu* actions under this Act.

3.4 E-Filing of Consumer Complaints

In accordance with the Consumer Protection Act, 1986 complaints had to be made either at the location of the registered seller's office or the place of purchase. The new Act of 2019 allows a complainant to file a complaint from his or her place of residence or from his or her place of employment for personal gain. It also allows consumers to file complaints through electronic mode.

3.5 Enhanced Pecuniary Jurisdiction

The pecuniary jurisdiction of the Consumer Disputes Redressal Commissions has been increased. When the value of goods and services paid as consideration does not exceed fifty lakh, the District Commission can now receive complaints. The State Commission can hear disputes above fifty lakh up to two crores and where the value exceeds two crores, the National Commission has jurisdiction. Previously, complaints in the District forum were based on the value of goods and services, and if any compensation is claimed, where the value does not exceeds twenty lakh. The pecuniary value for the State forum was above twenty lakh up to one crore, while the jurisdiction of the National Forum is of value greater than one crore.

In *Pyaridevi Chabiraj Steels (P) Ltd. v. National Insurance Company Ltd., Consumer Case No. 833 of 2020*, decided on 28-08-2020 by the National Consumer Dispute Redressal Commission, held that the value of goods or services paid as consideration alone, rather than the value of goods or services purchased, must be considered when determining the pecuniary jurisdiction of the District Commission, State Commission, or National Commission.

3.6 Consumer Dispute Redressal Commission

The Consumer Protection Act, 1986 introduced the three-tier consumer forums at the District, State and National levels. It is a quasi-judicial body that is constituted for the speedy disposal of consumer disputes. Under the new Act, these forums are renamed as consumer disputes redressal commission. The number of members while constituting consumer commissions is increased in the new Act. The Consumer Commission will consist of a President and the number of the members is to be appointed by the appropriate authority as are under:

- a. **District Commission:** President and not more than four members,
- b. **State Commission:** President and not be less than four members or such members as specified after consultation with Central Government, and
- c. **National Commission:** President and not less than four members or such members as specified.

At present, the number of members in the National Commission is eight and Hon'ble Justice R.K. Aggarwal is President of the National Consumer Dispute Redressal

Commission.

3.7 Appeals

i. Appeals from the order of the District Commission

Under the old Act, the time limit to file an appeal before the State Commission was of 30 days and no appeal could have been entertained unless a deposit of 50 % of the amount was made or Rupees 25,000 whichever was less. In the Consumer Protection Act, 2019 the time limit to file an appeal before the State Commission is 45 days. No appeal could have been entertained unless a deposit of 50% of the amount was made.

ii. Appeal from the order of the State Commission

Under section 19 of the Consumer Protection Act, 1986, no appeal is entertained unless a deposit of 50% of the amount was made or Rupees 35000 which ever was less. In the new Act, the appeal is entertained when a deposit of 50% of the amount is made to the State Commission.

iii. An appeal in cases when a substantial question of law is involved.

In cases where there is a substantial legal issue, an appeal may now be filed before the National Commission from any order rendered in an appeal by any State Commission. There was no such provision under the old Act.

It was held by the apex court in *Mehra Bal Chikitsalaya Evam Navjat Shishu v. Manoj Upadhyay and others LL 2021 SC163* that a writ petition under Article 226 of the constitution challenging the State Consumer Disputes Redressal Commission's judgments and orders is not maintainable.

3.8 Power to declare any terms of a contract as void

The new Act gives the State Commission and the National Commission the power to void any contract terms that are unfair to any consumer. Earlier Act did not contain such a provision.

3.9 Review

The Consumer Protection Act of 1986 only gives the National Commission the power to review any order it makes, whereas the new Act gives the District Commission, State Commission, and National Commission the same power.

3.10 Assistance By Expert

Under section 66 of the Consumer Protection Act of 2019, the State Commission and National Commission may direct assistance from any individual or organisation in the larger interest of the consumer.

3.11 Mediation

Mediation was introduced as an Alternative Dispute Resolution mechanism for the settlement of consumer disputes under the Consumer Protection Act, 2019. Under section 37 of the new Act, the complaint can be referred for mediation after admission or at any later stage by the commissions. Chapter V (Sections 74-81) contains the provision for mediation. Mediation cells are to be established at District and State level by the State Government and National level by Centre Government.

3.12 Product Liability

The Consumer Protection Act, 2019 introduces the concept of product liability. If a consumer is harmed, the product manufacturer, product service provider, and product seller all are liable for compensation. Product liability has now been extended to e-commerce platforms. The Act also includes some exceptions for product liability actions against product sellers in cases where the product has been misused, altered, or modified.

3.13 Enforcement Of Order

The provision for enforcement of a consumer commission order was simple under section 25 of the old Act. Under the

new Act a detailed procedure as provided under Order XXI of Code of Civil Procedure, 1908 is to be followed by the consumer Commissions for the enforcement of the orders passed by them.

3.14 Penalty For Non-compliance Of The Order Of The Commission

Under section 27 of the old Act, non-compliance with a commission order is punished with imprisonment for a term of not less than one month and up to three years, or a fine of rupees two thousand to rupees ten thousand, or both. According to the new Act, disobeying an order is punishable by a fine of up to one lakh rupees, a term of imprisonment that cannot be less than one month but cannot exceed three years, or both.

3.15 E-commerce

There was no provision for e-commerce in the Consumer Protection Act, 1986. The legislators have taken the most significant legislative action by the inclusion of e-commerce in the Consumer Protection Act of 2019. The Central Government also enacted Consumer Protection (E-Commerce) Rules, 2020 to prevent unfair trade practises in e-commerce and direct selling, as well as to protect consumers' interests and rights.

3.16 Punishments

The punishments are for the first time recognised by the Consumer Protection Act, 2019. These are as follows:-

- (a) Punishment for false or misleading advertisements is provided under section 89 of the Act. The punishment provided is imprisonment which may extend upto two years and a fine of up to ten lakh and for a subsequent offence, the maximum sentence is five years in prison and a fine of five lakh rupees.
- (b) Section 90 provides penalties for producing goods for sale or storing, selling, distributing, or importing goods that contain adulterants. The punishments for various offences are as follows:
 - i. If there is no harm to the consumer, a fine of up to one lakh rupees and a maximum six-month sentence may be imposed.
 - ii. A fine of up to three lakh rupees and up to a year in prison may be imposed for causing a consumer injury that does not amount to grievous hurt.
 - iii. For causing grievous hurt to the consumer imprisonment may extend up to seven years and a fine may extend to five lakh rupees.
 - iv. If a consumer dies, they will be sentenced to an amount of time that must not be less than seven years but may go as high as life in prison, and they will also be required to pay a fine that must not be less than ten lakh rupees.
- (c) Punishment for manufacturing for sale or storing, selling or distributing or importing spurious goods is provided under section 91. The punishment for offences are as follows:
 - i. A fine of up to three lakh rupees and up to a year in prison may be imposed for causing a consumer injury that does not amount to grievous hurt.
 - ii. In case of grievous hurt caused to the consumer, imprisonment may extend to seven years and the fine may be extended to five lakh rupees.
 - iii. In the event of a consumer's death, imprisonment is for a term that must not be less than seven years but may go as long as life in prison, as well as a fine that must not be less than ten lakh rupees.

The punishment prescribed under sections 90 and 91 is for the person who commits the offence himself or any other person committing the offence on his behalf. The offence causing grievous hurt or death to the consumer is cognizable and non-bailable. For the first conviction under sections 90 and 91, the Court may suspend any licence of the offender for a period of up to two years, and the licence is revoked in the

event of a subsequent conviction.

4. Drawbacks Of Consumer Protection Act, 2019

Some of the shortcomings under the Consumer Protection Act, 2019 are as follows:

1. The Act provides the remedy for those consumers who have paid for services and excludes services provided without consideration like charity and services rendered as social responsibility.
2. The Act lacks to impose any restriction or strict responsibility on anybody selling goods that are harmful or hazardous.
3. The Act defines a consumer as someone who purchases goods, hires goods, or uses any service in exchange for money, but it only protects the interests of consumers who have suffered losses or damages as a result of unfair trade practises or a trader's violation of the Act provisions.
4. The new consumer legislation has widened the pecuniary jurisdiction of the Consumer Dispute Redressal Commission but it lacks the authority to issue interim injunctions or cease-and-desist orders for speedy remedy until the consumer dispute resolves.
5. Under the new Act, a person cannot file a complaint if that person uses remedies available under any other law.
6. The Act completely exempts the chief executive officer, managing director, or manager of any organisation who is in default for not providing services that are required under the Act. Section 38(7) specifies a time limit for the speedy resolution of the consumer dispute within three months but this process takes a longer time.
7. The Consumer Protection Act of 2019 includes several rights for consumers, including the freedom to choose, the right to safety, the right to be informed, the right to redress, and the right to customer education, but the consumer's right to a safe and healthy environment is not included.
8. There are various vacancies in Consumer Dispute Redressal Commission and there is a lack of infrastructure in the Commissions across the country.
9. The Act establishes mediation as an alternative mode for the redressal of consumer disputes. Mediation is ineffective in resolving complaints about defective items or poor treatment from a service provider. The mediation cells are yet not established in various states.
10. There is no provision of penalty for frivolous and vexatious complaints filed under this Act.

5. Sum-Up

The Consumer Protection Act, 2019 has broadened the scope for protecting the interest and rights of the consumer. The paucities under the Consumer Protection Act, 1986 are addressed in the present Act. It aims at the protection of interest and rights of the consumer, establishment of authorities and speedy disposal or settlement of consumer disputes. Various structural changes in the Act are done like an increase in pecuniary jurisdiction, members of the commission, establishing mediation cells, central consumer protection authority for the protection of the consumer as a class and provision for e-commerce to protect the digital consumers. It seems that the Act will empower the consumers against misleading advertisements, unfair trade practices and unfair contracts. So it is important to make consumers aware and educate them about their rights.

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