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THE AWARE CONSUMER

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RESEARCH FEATURE

Consumer Protection
Across The World

OUT OF THE BOX

Should Healthcare
Adopt A Consumer
Rights-Based Approach?

IN FOCUS

Consumer Protection:
A Historical Perspective



CONSUMER
PROTECTION ACT
2019

CONSUMER LAWS AROUND THE WORLD

PLUS

ROUND UP • MY MARKET • THE PRESCRIPTION



National Accreditation Board for Testing and Calibration Laboratories (NABL)

(A constituent board of Quality Council of India)



Calibration Labs



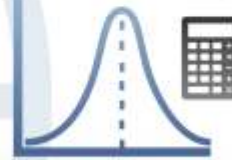
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NABL Accredited
Labs



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$-2 \leq z\text{-score} \leq +2$

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Reference Material Producer



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Medical laboratories in accordance with ISO 15189

Proficiency Testing Providers in accordance with ISO/IEC 17043

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Accredited Once Accepted Everywhere



BEJON KUMAR MISRA | bejonmisra@theawareconsumer.in

Good News For Consumers !

FOR CONSUMERS HERE is good news amidst the coronavirus (COVID-19) pandemic. The new Consumer Protection Act, 2019 that has provisions to deal with class actions, product liability, misleading advertisements and liability for celebrity endorsements, while addressing new age developments like e-commerce, direct selling and tele-marketing, came into force from 20 July 2020.

With the new law, district commission are empowered to handle consumer cases with claims of up to Rs 1 crore. State commission will handle cases with claims of between Rs 1 crore and Rs 10 crore while the National Consumer Disputes Redressal Commission (NCDRC) will handle all cases above Rs 10 crore.

Most importantly, with the new Act, any terms of a contract that are not fair to any consumer, can be declared as null and void by the state commission and NCDRC. This will help many consumers who are victims of one-sided agreements or terms and conditions imposed by the seller.

In addition, a consumer can take action about product liability against the product manufacturer or product service-provider or product seller, as the case may be, for any harm caused to him due to defective product. Till now, product-service provider or seller used to get away by putting the entire blame for defective product on the manufacturer. This new provision will help control mainly online sellers.

Last year, the Parliament had passed the Consumer Protection Bill, 2019 that would replace the Consumer Protection Act, 1986. The new act seeks to provide for protection of the interests of consumers and to establish authorities for timely and effective administration and settlement of consumers' disputes.

By broadening the definition of a Consumer to mean a person who "buys any goods" and "hires or avails any services" which includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing, the new Act has widened the purview of consumer protection to factor in the changing marketplace. It empowers consumers by providing provisions to check subversive trade practices, both offline and online. The new Act thus brings within its ambit not just traditional bricks and mortar outlets but also e-commerce. This will enforce safeguards and accountability and plug the holes in consumer protection in a digitized India wherein unscrupulous businesses were set to benefit by flouting consumer rights.

The new Act is a warning to sellers, whether a manufacturer or a service provider, to beware, responsible and mindful of consumers and their rights.

The Consumer Protection Act, 2019 proposes setting up of a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers as a class. The CCPA would make interventions to prevent consumer detriment arising from unfair trade practices.



It's more than just about innovation in healthcare
It's about creating
new ways for a **new world**

At Glenmark, we are synonymous with innovations in pharmaceuticals. Our track record boasts a legacy of developing medicines and molecules that have been revolutionary in impact. However to us, these innovations serve a greater purpose. We wish to create a world devoid of pain, where every face beams radiantly with joy! We are a world where a brighter tomorrow dwells in the hopes and ideas of today.



Message from the Editor-in-Chief

POOJA KHAITAN

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An Act Of Empowerment

DESKTALK

CONSUMERS REJOICE. THE new Consumer Protection Act through its provisions has empowered us to exercise our rights in this new brave world. It covers almost every aspect of consumer life and provides ample safeguards, deterrents for sellers and manufacturers and options for legal recourse if the need arises with built in provisions of speedy justice taking care of consumer comfort and convenience. In short, it empowers Indian consumers.

The Act in itself is a powerful piece of legislation. But a lot will depend on the implementation of its provisions. In comparison to the more developed economies institutional mechanisms for consumer protection, India is still in the nascent stages of developing its institutional mechanisms for consumer protection. The most important step to ensure the rights of the consumers is consumers awareness about those rights and the laws. Consumer awareness levels in India currently are abysmally low. Another important aspect is the enforcement of the statutes regarding consumer protection, which again is far behind the developed countries that

employ advanced technologies like Artificial Intelligence system that make the entire process from filing to redressal simple and smooth.

India also lags behind in economics information. While western countries ensure competition that forces seller to produce high quality goods and services, that is not the case in India. Information about products and services is often vague and complex and hence leads to conflict between various laws. Right to choice, i.e., the availability of products at competitive and fair prices at all the places ensures markets remain competitive. This again is still developing in India and impacts consumer rights.

However, winds of change are discernible, and it is hoped that with the new Act helps India takes a leap in the right direction.

A handwritten signature of Pooja Khaitan in black ink on a light background.



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CONSUMER PROTECTION ACROSS THE WORLD



Consumer protection has gained much momentum over the decades with several global networks devoted to ensuring consumers are protected not just within their countries but across the globe.



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EMPOWERING INDIA'S HOMEBUYERS



Consumers in the real estate sector now have a powerful combination of laws that ensure they are not shortchanged.



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SHOULD HEALTHCARE ADOPT A CONSUMER RIGHTS-BASED APPROACH?



The omission of healthcare from the list of services in the Consumer Protection Act, 2019, has given rise to ambiguities regarding its treatment under the Act.



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IN FOCUS

CONSUMER PROTECTION: A HISTORICAL PERSPECTIVE



The rising consciousness of consumers regarding their need for protection and rights led to governments across the world instituting laws for their protection.

RALPH NADER

AMERICAN POLITICAL ACTIVIST, AUTHOR, LECTURER, ATTORNEY

“Ours is a system of corporate socialism, where companies capitalize their profits and socialize their losses...in effect, they tax you for their accidents, bungling, boondoggles, and mismanagement, just like a government. We should be able to deselect them.”



ROUND UP



Class-action suits, a legal tool widely used in western consumer markets such as the US, enable one individual complaint of a faulty product or service to be treated as an “interest group” of other people in similar circumstances.

The Power Of CLASS

Class action suit is a key provision for consumer empowerment in Consumer Protection Act, 2019

DATA BRIEFING

USD
550

million

–The largest-ever payout as the result of a class-action lawsuit alleging online privacy violations against Facebook.

ON JULY 20, the Ministry of Consumer Affairs notified the Consumer Protection Act, 2019 and brought in sweeping consumer reforms that have empowered the Indian consumer as never before. A key reform is the establishment of the Central Consumer Protection Authority (CCPA). The CCPA has the power to conduct investigations into violation of consumer rights, can order recall of unsafe goods and services and also take suo motu complaints against brands where a class of consumers is impacted due to a defective product or deficient service.

The introduction of class action suit provision is one of the key measures included in the Act 2019. A class action suit is an additional mode of relief for the consumers. Consumers can use it alongside individual complaints to address grievances, empowered to carry out two parallel proceedings.

Class-action suit is a legal tool widely used in western consumer markets and enables one individual complaint of a faulty product or service to be treated as an “interest group” of other people in similar circumstances. Class action suit gains importance especially in cases where a whole batch of products is faulty, and a single complaint can lead to the recall of the entire defective batch. Class Action or 'Representative Action', allows a group of people to

collectively bring a claim to the court through a representative. A class action lawsuit becomes handy in cases where a large number of people may have suffered from the same or similar kind of injury or loss due to faulty product. Individually it may not make sense to seek legal redress but when a group files a lawsuit the value of the claims adds up. Claiming compensation damages as a class also helps the consumers consolidate aspects of the litigation. And saves, in some cases, thousands of consumers across the globe from individually filing cases and the attendant financial, mental and physical harassment.

In the US, the concept of class action was first introduced in 1938. In India, it owes its genesis to the Satyam scam of 2009. In this particular case, the absence of the provision for filing a class action suit under the Companies Act, 1956, prevented approximately 300,000 shareholders of Satyam Computers Services Limited from claiming damages worth millions. On the

other hand, American investors could claim their damages in the US courts through a class action suit against SCSL. This lacuna prompted the Indian Parliament to draft the Companies Bill, 2009 introducing provisions enabling affected shareholders to file a class action suit.

The introduction of class actions tool has received wide welcome from consumers who feel seeking redressal for misleading advertisements, defective products and deficient services will now become easier. The class action suit mechanism will exert pressure on companies to accept recalls.

A survey conducted by LocalCircles, a community and social media platform, found 96% of the consumers surveyed believe that a functional class action suit mechanism should be made applicable in case of a service contract. 93% consumers also wanted a functional class action suit mechanism in cases where brands were found engaging in unfair trade practices or





IMAGE: PIXABAY

Regarding misleading advertisement or an unfair trade practice by a brand/service provider in the last 3 years, the survey found 14% respondents had raised the issue with the brand/service provider and got it addressed, 10% had raised the issue with the brand/service provider but they refused to address it and 14% said the brand/service provider refused to address. These consumers then turned to social media to create awareness about the malpractice.

The survey received more than 48,000 responses from consumers located in 270 districts of India. 64% respondents were men while 36% respondents were women.

Under the new consumer protection law, class action suit can be filed against defaulting companies.

The new law that overrides the older Consumer Protection Act, 1986, brings in a welcome change as the older Act did not have clear rules on product recalls or provided a legal meaning of product liability. Thus, the product manufacturers had no post-purchase obligations and in the absence of rules for mass recalls, got away with it. The lack of the provision for mediation also led to long-drawn court battles for

misleading advertisements.

Though there have been cases of mass product recalls of faulty products in India, but these were largely voluntary rather than enforced legally under consumer rights. Now, in cases of major service deficiency that impacts a large number of consumers wherein the service provider instead of compensating, bills the consumers at the full rate, the consumers can collectively file a class action suit and demand compensation.

Defective products were found to be one area where the class action reform should focus first. 49% consumers had bought inherently defective products in the last 3 years while 38% had never faced such an issue. While 41% of those who had bought defective products had raised the issue with the brand, and got it fixed; 21% though they had raised the issue with the brand were refused to fix it. Only 5% raised the issue with the brand and upon their refusal to fix it, took the case to the consumer courts and won it.

dispute settlement.

The new law grants the consumer protection authority powers to first initiate class action and then enforce recall, refund and return of products. The new law also spells out the manufacturer's liability and onus of product recall. Not only this, at the state level, district collectors have been empowered to probe complaints that affect the interests of consumers as a class.

Another important provision is the definition of "unfair contract" between a manufacturer or trader or service provider on the one hand and a consumer on the other. Consumers can now seek legal recourse in cases where an "unfair contract" has caused "significant change" in their rights as a consumer. These include a manifestly excessive security deposit or a penalty to be paid to a manufacturer or a service provider which is disproportionate to the losses caused. ▶

Source: Secondary research & media reports



DISPO VAN

THE TRUSTED BRAND
PROMOTING PATIENT SAFETY

**MADE IN INDIA,
CURING PEOPLE
AROUND
THE GLOBE**



Precision Engineered, Affordable & Easy to use.

Consumers, Beware

PROTECTING OUR CHILDREN ONLINE

Violations of children's rights online are rampant, calling for stringent laws to keep our children safe. Parents and children too need to be made aware of the pitfalls and the laws.

*Children too have the right to
privacy and data protection*



IMAGE: FREEIMAGES

THE MENACE OF social media is not just your children glued to their mobile screen. It is much more insidious in the form of the social networking platforms and websites that they visit collecting and storing their data surreptitiously.

In September 2019 last year, Google LLC and its subsidiary YouTube, LLC were asked to cough up a record \$170 million to settle allegations by the Federal Trade Commission and the New York Attorney General that the YouTube video sharing service illegally collected personal information from children without their parents' consent.

The settlement required Google and YouTube to pay \$136 million to the FTC and \$34 million to New York for allegedly violating the Children's Online Privacy Protection Act (COPPA) Rule. The \$136 million penalty is by far the largest amount the FTC has ever obtained in a COPPA case since Congress enacted the law in 1998.

The COPPA Rule requires that child-directed websites and online services provide notice of their information practices and obtain parental consent prior to collecting personal information from children under 13, including the use of persistent identifiers to track a user's Internet browsing habits for targeted advertising. In addition, third parties, such as advertising networks, are also subject to COPPA where they have actual knowledge, they are collecting personal information directly from users of child-directed websites and online services.

Online Child Protection in India

Following the ruling in the US, many experts in India raised concern over exposing kids to predators, phishing and bullying online as millions of children in India are



IMAGE: FREEIMAGES

Collecting personal information of children online without permission is unlawful.

accessing the net on their parents' or their own devices as education goes digital. A study conducted by the Internet and Mobile Association of India (IAMI) had reported that 66 million internet users in the country are in the age bracket of 5 to 11 years and they are viewing it on the devices of family members.

It goes without saying that these digital kids are being exposed to predators, bullying, phishing, or even malware attacks.

Major Privacy Judgments Against Google

FTC and NY Attorney General v. Google and YouTube

\$170,000,000 judgment

Millions of Dollars

FTC and NY Attorney General v. Google and YouTube



French Authority v. Google 2019 (Proposed)

57

FTC v. Google 2012

22.5

States v. Google 2013

7

Italian Authority v. Google 2014

1.4

Source: Federal Trade Commission | FTC.gov

The now banned social network TikTok was earlier too pulled up by the Government of India for the 'inappropriate content' being made available on the platform. However, TikTok was not the only platform exposing users to such content.

Recently, the U.S. Justice Department and Federal Trade Commission (FTC) instituted an investigation into TikTok for its alleged failure to comply with a 2019 agreement to protect children's privacy. Earlier in May, advocacy groups including the Campaign for a Commercial-Free Childhood had asked the FTC to probe TikTok for its failure to delete videos and personal data from users aged 13 which it had said it would do in a February 2019 agreement. There were also allegations of other violations.

before collecting personal information and clear information about parental control imperative.

It is hence reassuring to note that Chapter IV of the Indian Personal Data Protection Bill, 2019 (PDP Bill) is directly concerned with personal data and sensitive personal data of children. The provisions of the bill require processing of personal data of children in such a manner that there is no violation of child's rights and that it is in the best interests of the child. The bill also provides for when and how consent should be provided for the processing of such data, and who can provide such consent. Further, it lays in clear terms the specific types of processing that will not be permitted in relation to children's personal data.

Any person below the age of 18 is considered a child

In India, child's online rights are yet to be taken seriously and there has been little effort on the part of the government as also social media platforms to ensure that kids are not exposed to 'inappropriate content'. Nor are there any strong laws that could deter online platforms from collecting any private information about the children.



TikTok is not alone to be disregarding children's privacy and protection. Other social media platforms too, have similar, if not worse, content that could be easily accessible to children as it these did not require any restrictions or had any mechanism to verify the age of the user.

In India, child's online rights are yet to be taken seriously and there has been little effort on the part of the government as also social media platforms to ensure that kids are not exposed to 'inappropriate content'. Nor are there any strong laws that could deter online platforms from collecting any private information about the children.

Children-directed content and ads are regular on platforms targeting kids less than 13 years of age. The proliferation of such kid-specific apps and platforms makes the requirement for verifiable parental consent

in accordance with the laws on the age of majority. In India, only a person who is 18 years of age can enter contracts, vote, etc.

Need for awareness

Laws alone will not be an adequate safeguard to keep our children safe online. There is an urgent need to educate both the parents and kids on safe behavior and practices online and also the consequences of unsafe practices.

We all know how unsafe the internet is even for adults. For children, it is an outright dangerous space and parents need to be vigilant and ensure access is supervised till the child's old enough and has demonstrated safe practices online. ▶

Source: Secondary research & media reports

RESEARCH FEATURE

Consumer protection has gained much momentum over the decades with several global networks devoted to ensuring consumers are protected not just within their countries but across the globe.



IMAGE: PIXABAY

Consumer protection is gaining ground across the world as governments become more aware and powerful global bodies take up the cudgels on the behalf of consumers.

ACROSS THE WORLD

COMPETITION AND CONSUMER protection matter and have a direct role to play in the promotion of economic growth and in the reduction of poverty. To flourish, enterprises need a safe, stable and attractive environment. This requires establishment of fair, sound and robust national competition. Herein consumer protection laws and policies come into the picture by enabling inclusive and sustainable development.

Competition promotes innovation, productivity and competitiveness and leads to the creation of an effective business environment. When there is fair competition, economy gets an impetus and employment opportunities multiply. Fair market conditions create a conducive environment for small and medium sized enterprises, remove barriers and minimize opportunities for corruption.

Competition and open market are essential for a country to attract businesses and this leads to national and foreign investments. The biggest benefit of competition is lower prices, improved services and greater choice for consumers. Thus, competition is essential for total consumer welfare.

Consumer protection is essential to provide consumers the right of access to safe products, information that can enable them to make informed choices and get effective redress.

Further, when consumers are empowered, they are less vulnerable to exploitation. This translates into better welfare and also forces businesses to apply a common set of standards, supporting competition and thus creating a level playing field for all players in the market.

One of the prominent global organizations working in the field of consumer protection is the International Consumer Protection Enforcement Network (ICPEN). It is a membership organization comprising consumer protection law enforcement authorities from around the world.

Consumer protection across the globe

ICPEN is a forum that enables consumer protection agencies across the globe to develop and maintain regular contact and keep the focus on consumer protection concerns. It encourages cooperation between agencies and through its efforts helps members to have a greater impact on consumer laws and regulations. The network is geographically diverse with the mission to protect consumers worldwide.

The mission of the organization is to protect consumers by encouraging and facilitating practical action to prevent cross-border marketing malpractice. The network works with the principle of information sharing on market developments and regulatory best practice and also coordinates and cooperates to tackle market problems.

Genesis

ICPEN traces its history to 1991, when at the initiative of Denmark's Consumer Ombudsman, the idea for an informal network of consumer authorities from various countries, involved with the enforcement of fair-trading

practices, was born. The network would explore ways of co-operating to tackle consumer problems connected with cross-border transactions in both goods and services. It was also envisaged to promote exchange of information among the participants.

In 1992, a meeting was held in London hosted by the then United Kingdom Office of Fair Trading, where participants agreed to a Memorandum on the Establishment and Operation of the ICPEN (the ICPEN MOU). This led to the formal establishment of the International Marketing Supervision Network.

It was later at a meeting held in Sydney in 2002 that the name of the Network was changed to ICPEN with the idea to better reflect the work of the Network. There have been several amendments to the ICPEN MOU since 1992.

How ICPEN Works

The model works with a rotating presidency. Currently, as of 1 July 2020, the Competition Bureau Canada, is essaying the role of the 2020-2021 ICPEN presidency. On 1 July 2021, Portugal will assume the presidency, under the stewardship of the Ministry of Economy, Innovation and Development – Consumer Directorate-General.



IMAGE: PEXELS

Consumer protection is essential to provide consumers access to safe products and information that helps them make informed choices.

The network has three types of participants – Members, Partners and Observers. As at December 2019, the network has member authorities representing 64 countries and 4 partner organizations with membership pending. Apart from these, ICPEN has 6 observer authorities.

Under its cooperative model, the ICPEN works with the mandate to share information about cross-border commercial activities that may impact consumer interests and encourages international cooperation and

collaboration among consumer law enforcement agencies to fulfill this mandate.

The global reach of the network has enabled it to target consumer protection challenges and problems faced by consumers around the world.

The core strategies of the network aimed at achieving its consumer protection mandate include:

- Coordinating and cooperating on consumer protection enforcement matters.
- Information and intelligence sharing on consumer protection trends and risks.
- Sharing best practice information about key consumer protection laws, enforcement powers and regulatory approaches to consumer protection.

Despite its wide mandate, the network does not deal with the regulation of financial services or product safety.

The network focuses on specific initiatives that are aimed to implement the ICPEP's strategic objectives. The objectives as delineated by the network are:

- Generate and share information and intelligence on consumer protection issues.
- Share best practice in legislative and enforcement approaches to consumer protection.
- Take action to combat cross-border breaches of consumer protection laws.
- Identify and promote measures for effective consumer protection enforcement.
- Promote and encourage wider participation, coordinated work, communication and cooperation with other consumer protection enforcement organizations.
- Facilitate cross-border remedies.

The network has five enduring initiatives that contribute to achieving its strategic objectives:

1. Fraud Prevention Month
2. International Internet Sweep Day
3. eConsumer.gov
4. Consumer Education Awards
5. Industry guidance

Dedicated collaborations to enforce consumer protection

Around the globe dedicated organizations are working to provide better and more comprehensive protection to consumers. Some of these bodies are as follows.

Organisation for Economic Cooperation and Development (OECD)

The OECD is dedicated to promoting policies for the improvement of the economic and social well-being of consumers around the world. It is a forum that promotes governments to work together, share experiences and seek solutions for common problems of the consumers.



IMAGE: PIXABAY

The organization works with governments to understand what drives economic, social and environmental change. The OECD is an observer organization of ICPEP. The OECD through its Committee on Consumer Policy (CCP) especially, works to address a wide range of issues that concern consumers.

United Nations Conference on Trade and Development (UNCTAD)

The overall objective of UNCTAD's programs is to promote inclusive and sustainable development through international trade through analysis and advice. It also works to build consensus, strengthen capacity and promote partnerships for trade policy, trade negotiations, trade in goods and services, competition law and consumer protection, and managing issues arising at the intersection of trade, the environment and climate change. Its work on competition and consumer policies is aimed at ensuring that partner countries enjoy the benefits of increased competition, open and contestable markets, private sector investment in key sectors and that consumers achieve improved welfare.

EU Consumer Protection Cooperation Network (CPC)

The EU has established CPC, a grouping of national authorities responsible for the enforcement of consumer protection laws across the European Union (EU), Iceland and Norway. This body provides mutual assistance through the exchange of information and by investigating



Global organizations join hands to keep consumers safe across the world.

for any possible breaches of consumer law. The collective aim is to protect the interest of consumers across Europe.

European Consumer Centre Network (ECC-Net)

A network of 30 offices in the 28 EU Member States, Norway and Iceland, ECCs are co-financed by the European Commission and national governments, as part of the European policy to assist every citizen in Europe to take advantage of the single market. The network aims to provide free of charge help and advice to consumers on their cross-border purchases, whether online or on the spot within these 30 countries. The EC is an observer organization of ICPEN.

APEC Electronic Commerce Steering Group (AECSG)

The purpose of this body is to promote the development and use of electronic commerce. It does this by providing support to the creation of legal, regulatory and policy environments in the APEC region that are predictable, transparent and consistent. The AECSG works to enable economies across all levels of development to utilize Information and Communication Technologies (ICTs) in order to drive economic growth and social development. It performs a coordinating role for APEC e-commerce activities, based on the principles set out in the 1998 APEC Blueprint for Action on Electronic Commerce.

Iberoamerican Forum of Consumer Protection Agencies (FIAGC)

This is a multilateral forum which is dedicated to the analysis and discussion of the public policy of consumer protection. The body has been formed by the governmental agencies of Latin America, Spain, and Portugal. FIAGC works to promote cooperation among its members through the exchange of information and experiences covering all such areas of common interest that help them to efficiently develop and apply public policies for consumer protection.

ASEAN Coordinating Committee on Consumer Protection (ACCCP)

An organization in Southeast Asia dedicated to the promotion of consumer protection, ACCCP has main objective are:

- providing consumers with proper information and redress
- stopping rogue traders and unfair commercial practices
- ensuring that only safe products are placed in the market

The body comprises representatives from Brunei Darussalam, Cambodia, Malaysia, Myanmar, Indonesia, Laos, Philippines, Singapore and Thailand who network and share critical information aimed at protecting consumers against substandard products and unethical and unfair trading.

Unsolicited Communications Enforcement Network (UCENet)

Formerly known as the London Action Plan (LAP), UCENet is an informal network of government and non-government bodies who are collaborating on global unsolicited communications enforcement.

Global Privacy Enforcement Network (GPEN)

GPEN was formed in June 2007, when OECD governments adopted a Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy. The Recommendation called for member countries to establish an informal network of Privacy Enforcement Authorities and outlined a number of tasks for the body.

Consumers International

This is a not-for-profit, non-government organization that works with its members and partners globally with the mission to empower and champion the rights of consumers, and ensure they are treated safely, fairly and honestly. Founded in 1960, Consumers International promotes a fair, safe and sustainable future for all consumers in a global marketplace. It has more than 200 member organizations in 100 countries. The body is building a powerful international movement to help protect and empower consumers everywhere. ▶

Source: Secondary research & media reports

Access to **Safe Drinking Water** is a Human Right

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and Protect Your Family
from Waterborne Diseases



KENT TECHNOLOGY

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Multiple Purification

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Kent Deta Hai

**Sabse
Shudh Paani**



CONSUMER PROTECTION: SKEWED BALANCE

The strong link between a country's income and its consumer protection indicates a flaw because consumers in the lower income countries need the most protection.

A CONSUMER INTERNATIONAL report of 2013 noted that the Consumer Protection Act (CPA) was the predominant mechanism for the governance of consumer protection in a country with 77% of all countries using such a measure.

But are CPAs the true measure of gauging the level of protection that a consumer enjoys in a country? To find the answer to this question, let us look at the pattern of consumer protection around the world.

As the report found CPAs are much less prevalent in low income countries (LICs); 77% of high-income countries (HICs) and 90% of middle-income countries (MICs) report the

existence of a CPA, while the figure for LICs is 61%. Geographically too there is a correspondence with the pattern, with Sub-Saharan Africa (SSA) reporting the lowest prevalence of CPAs at 63%.

According to the report, just 52% of the countries had a national policy on consumer protection around the time. Here too it was found that that the more higher income countries boasted of a national policy – 68% of HICs, than lower income countries – 50% of MICs and 33% of LICs. A substantial number of LICs had a CPA but no national policy. Only 18% of all countries surveyed had a master/strategic plan for consumer protection.

No guarantee of protection

CPAs however do not provide a guarantee of consumer protection. Where there are such acts, the poor implementation of the same expose consumers to all sorts of exploitation. Elsewhere, such policies are limited in application, are outdated or inadequate.

The United Nations guidelines for consumer protection in its general principles expects Member States to develop, strengthen or maintain a strong consumer protection policy, in accordance with the UN guidelines and other relevant international agreements. However, despite the

IMAGE: PIXABAY



Consumers in poor countries are more exploitable and at the mercy of markets.

comprehensive guidelines, consumer protection in different countries remains at different levels. Perhaps the problem lies in the faulty implementation of the guidelines. Most countries first adopt a CPA as a first step before going into developing more comprehensive policy or strategy. The Consumer International report states that theoretically, the development of the policy should be followed by a strategic plan and should eventually lead to a program including legislation. However, in practice this process becomes marred by various considerations and factors that may be beyond the control of governments.

Narrow definition of consumer

The legal definition of the consumer is often narrow as in most countries, consumption is defined as only relating to the supply and household use of goods and services. However, while a clear demarcation between a consumer's business and personal life may be possible in developed countries, such unambiguous boundaries are hard to draw in emerging and developing countries. In rural areas and even urban areas in

developing countries, consumers are often also small-scale producers and live and work in their place of work and this makes it difficult to distinguish between purchases of goods and services for business or for personal use. The work from home culture is now blurring this distinction in advanced economies too as consumers are also buying supplies for business/work at home and supplying it to consumers from home. Such blurring distinctions open

up interesting dimensions in consumer protection law.

Consumer protection is a joint responsibility

While a majority of countries have adopted legislation, ranging from 63% of countries that legislated in the area of social security and 87% of countries with laws to ensure that basic healthcare needs are met and at least 50% of HICs, MICs and LICs

Consumer protection acts are not an automatic guarantee of consumer protection.

IMAGE: PIXABAY



reported the existence of legislation in each sector identified, as per the Consumer International report, in many countries such laws are frequently not effective.

However, to presume that consumer protection is the sole responsibility of the government is a fallacy. The UN guidelines state that the function of consumer protection falls within the ambit of both public and private bodies and may be conferred by specific laws or assumed by virtue of their status. The bodies that play a role in consumer protection include government agencies, statutory and non-statutory standards bodies, ombudsmen, professional and



Consumer protection is a collaborative process.



industrial associations self and co regulations and consumer associations.

Lopsided protection

Countries around the world are definitely rising to the need for constitutional measures to promote consumer rights. Also, in the global economy and the era of the internet, there is growing awareness among consumers regarding not just their rights but also the laws and the rights that

developed countries guarantee their consumers. Consumers are now more demanding of their rights not only within their country but also in the international markets. However, consumer protection is still lopsided especially in developing countries where the governments are more focused on ensuring that consumers are first granted their basic constitutional rights, as for example, the right to education.

Yet, despite this focus, as the

2013 Consumer International report found, while the constitutional provisions had been adopted in a majority of cases (64%), there was little evidence that constitutional provisions had led to higher levels of access across the sectors. As the report's findings suggest that though constitutional provisions have value, but they are yet to show tangible results in that shape of outcomes in many countries.

Conclusion

Most countries have taken giant strides in the realm of consumer protection and have instituted a wide range of measures to ensure consumer protection. Yet, despite the positive developments reported, there exist serious gaps. The mere existence of laws and regulations is not an adequate measure of the level of consumer protection as in many countries the implementation of these regulations is lax, and the enforcement is a major weakness. Further, the strong link between income level and the development of consumer protection regime is worrisome as it is the consumers in poorer countries who are most exploited and require stringent protection.

To conclude, the existence of legal measures – whether legislative or constitutional – must be backed by strong political will to guarantee consumer protection. ▶

Source: Secondary research & media reports



IMAGE: PIXABAY

The definition of consumer is often too narrow to provide comprehensive protection to consumers.



Empowering India's **HOMEBUYERS**

Consumers in the real estate sector now have a powerful combination of laws that ensure they are not shortchanged.

HOW DO LEGISLATIONS regarding consumers in specific sectors impact consumers' rights under the Consumer Protection Act? For the lay consumer deciphering the various laws enacted from time to time for their protection and its impact on their rights enshrined in the Consumer Protection Act is difficult. For example, looking at the exploitation of consumers in the real estate sector, the government instituted specific laws for their protection and redress. Homebuyers were declared as Financial Creditors under the Insolvency and Bankruptcy Code, 2016 (IBC) and the Real Estate (Regulation and Development) Act, 2016 (RERA) was instituted to provide uniform laws throughout the country.

While RERA seeks to protect the interest of homebuyers and increase transparency in the functioning of developers and builders and reduce the chances of default or misappropriation of funds; the IBC which is among the most effective mechanisms for timely recovery of monies and revival of sick companies, includes the allottees of a project and deems them as financial creditors. It thus seeks to provide an alternative remedy to homebuyers in India seeking redress. All real estate matters for adjudication come within the scope of RERA.

Issues raised

RERA however raised two issues – firstly, whether an arbitration clause in an agreement would prevent consumers from seeking remedy under the Consumer Protection Act, 1986 and secondly, whether RERA would bar civil courts from exercising jurisdiction in real estate matters.

The matter was brought to NCDRC regarding the applicability of RERA, Act 2016 over the CPA, 1986. Looking at the statement of object and reasons of both the acts, NCDRC had observed that the purpose of RERA was to provide effective consumer protection in the real estate sector whereas the CPA, 1986 was enacted for better serving the interest of the consumers. The Commission noted that the Act is in addition to and not in derogation of any other law. The purpose is to provide for speedy and expeditious remedy to the consumers through setting up of district, state and national level forums as an additional/ jurisdiction in excess to the remedy provided under other Acts.

In the case of whether the consumer forums are civil courts and if they are barred from entertaining disputes concerning real estate matters, the Commission held that the Consumer Forums are not civil courts and that only the power to grant injunction was taken away by the provision under section 79 of RERA, Act 2016. The

Commission further reiterated that there was no provision in the CPA, 1986 which was inconsistent with RERA, 2016. It held that both the legislations supplement each other. In a 2019 case, the NCDRC resolved that a consumer case cannot be barred on the grounds that a remedy is already available in law to the complainant and also stated that unless a similar matter is not filed by the consumer before any other forum the same is not liable to be dismissed.

Passing judgment on a batch of petitions moved in the Delhi High Court by real estate companies against the National Consumer Disputes Redressal Commission (NCDRC) order questioning whether proceedings under the CPA 1986 can be commenced by homebuyers against developers after the commencement of RERA 2016, the High Court placed reliance on the Supreme Court judgment in the Flat Buyer's case wherein it was held that that remedies given to allottees of flats are concurrent and they are in a position to avail remedies under the CPA, RERA as well trigger the IBC. It was observed that the provisions of RERA were not intended to be exclusive, but to run parallel with other remedies.

The Courts' rulings are a massive victory for the beleaguered consumers who have been for long subjected to unfair treatment by real estate players.



IMAGE: PIXABAY

India's beleaguered homebuyers now have the protective cover of strong laws.



IMAGE: PIXABAY

India's homebuyers can now seek remedy under a combination of laws.

Remedies for homebuyers

Now, homebuyers can seek justice under RERA, CPA and IBC. RERA empowers a homebuyer or a prospective purchaser to file a complaint against not just individuals but also corporate entities. The timeline for RERA to get consumer redressed can extend from a few months to years and depends on the state where it has been filed. There are one or two RERA offices in each state constituted by the Authority under the Act. Typically, RERA can order a fine, deregister the project, include the promoter in list of defaulters, direct completion of project in manner provided in consultation with state government and pass other appropriate orders.

Under the CPA, a consumer can file a complaint typically if he/she has entered into an agreement for purchase of flat for individual use and residence. In a

Passing judgment on a batch of petitions moved in the Delhi High Court by real estate companies against the National Consumer Disputes Redressal Commission (NCDRC) order questioning whether proceedings under the CPA 1986 can be commenced by homebuyers against developers after the commencement of RERA 2016, the High Court placed reliance on the Supreme Court judgment in the Flat Buyer's case wherein it was held that remedies given to allottees of flats are concurrent and they are in a position to avail remedies under the CPA, RERA as well trigger the IBC. It was observed that the provisions of RERA were not intended to be exclusive, but to run parallel with other remedies.


consumer forum, the redressal of a consumer grievance can take up to 5 to 6 years. Since the consumer forums have the power to execute its own orders, it is an expeditious affair.

Under the IBC, the allottee of project is considered a financial creditor since the amendment in August 2018 and any person whether an individual or corporate entity can file an insolvency application under Section 7 of the Code. A consumer can expect adjudication in six months to a year.

Conclusion

The judgments by the High Court, the Supreme Court and the authorities under RERA, CPA and IBC, seem to be tilted in favor of the consumer/homebuyer. Finally, India's aggrieved homebuyers have a host of remedies that empower them against unscrupulous developers. ▶

Source: Secondary research & media reports



Consumer Protection Act, 2019 empowers consumers with comprehensive coverage bringing many hitherto left out concerns including digital commerce within the purview of the Act.

New Age Act For New Age Consumers



THE CONSUMER PROTECTION Act, 2019 that came into force from 20 July and replaces the Consumer Protection Act, 1986, is a new age law for the new age consumers. In the more than three decades between the two Acts, a lot has changed, primarily the consumer who is now a digital citizen. The modes of shopping have changed too and become more complicated. The markets are globalized, and consumers shop across borders and continents. A new law that factored in all these developments was urgently needed.

That the Union Minister for Consumer Affairs, Food & Public Distribution Ram Vilas Paswan briefed the media via a videoconference on the Consumer Protection Act, 2019, is a commentary on our changed world. This is the new normal and hence the Act comes at the most appropriate time in the history of consumer movement in India.

The new Act will be a powerful instrument for empowering consumers. It will enable consumers to protect their rights through its various notified rules and provisions like Consumer Protection Councils, Consumer Disputes Redressal Commissions, Mediation, Product Liability and punishment for manufacture or sale of products containing adulterant / spurious goods.

A key feature of the new Act that is being touted as revolutionary is the establishment of the Central Consumer Protection Authority (CCPA) which will work to promote, protect and enforce the rights of consumers. The government notified the new Central Consumer Protection Authority (CCPA) with effect from July 25. The watchdog led by a chief commissioner has been granted sweeping powers to book violators of consumer rights and to enforce the Consumer Protection Act, 2019. It will regulate issues related to consumer rights, including unfair trade practices and misleading advertisements.

The CCPA has wide authority and will be empowered to conduct investigations into violations of consumer rights and institute complaints/prosecution, order recall of unsafe goods and services, order discontinuance of unfair trade practices and misleading advertisements, impose penalties on manufacturers/endorsers/publishers of misleading advertisements, etc.

E-commerce gets dedicated rules

The government also notified a slew of new e-commerce rules as part of its updated consumer protection legislation on July 23. These rules make online retailers more accountable and will enforce transparency in e-commerce businesses.

Under the new Consumer Protection (E-Commerce) Rules, 2020, e-tailers are required to mandatorily display details such as return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism as well as the country of origin.

The price manipulation and the culture of deep discount that had been red-flagged will come to an end as e-tailers will no longer be allowed to manipulate the price of goods and services offered on their platforms for huge profit. Importantly, they cannot discriminate between consumers or make any arbitrary classification of consumers that affect their rights under the Act.

Indian consumers get protection from all electronic retailers offering goods and services to Indian consumers, whether registered in India or overseas, as all come within the ambit of the rule. Marketplaces working as aggregators such as Amazon and Flipkart also come under its purview including inventory-led models. Any e-commerce entity found flouting the rules will face penal action.

By clarifying the distinct scope of responsibilities between the marketplace platforms and the sellers on the marketplaces, the rules bring clarity. This clarity will also help with the enforcement of these laws and promote ease of doing business. The rules require every seller to provide details of a grievance officer, which again would boost transparency in redress and consumer protection.

The requirement that every e-commerce entity provide clear information on return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism, payment methods, security of payment methods, charge-back options, country of origin, etc., will enable the consumer to make an informed choice right at the pre-purchase stage.

An important rule that enforces the power of consumers in the marketplace is the stipulation that an e-commerce platform must acknowledge the receipt of any consumer complaint within 48 hours and redress the complaint within one month from the date of receipt. The concept of product liability in the new Act has wide application and for any claim for compensation, it brings within its scope the product manufacturer, product service provider and product seller.

The new Act further simplifies the consumer dispute adjudication process in the consumer commissions. It empowers the State and District Commissions to review their own orders and enables a consumer to file complaints electronically. It also allows consumers to file complaints in consumer commissions that have jurisdiction over the place of their residence. Further, by allowing videoconferencing for hearing and deemed admissibility of complaints if the question of admissibility is not decided within the specified period of 21 days, the Act grants consumers much flexibility.

Some key features of the Act are:

1. Central Consumer Protection Authority is established: This is the regulatory authority with wide powers of enforcement and includes an investigation

wing, headed by a Director-General, empowered to conduct inquiry or investigation into consumer law violations.

2. Product liability introduced: A key mechanism that provides protection to consumers from defective products. Now manufacturers, sellers, and service providers can be held liable for any damages caused to a consumer arising from defective products or deficient services. The Act also defines the term 'product seller' which includes any person who is involved in listing the product for a commercial purpose. The definition effectively brings e-commerce platforms under the purview of the law. This definition has been specifically brought about to prevent e-commerce platforms from circumventing the law to escape liability by claiming that they are mere 'platforms' or 'aggregators'. Further, the law would also not spare such manufacturers/sellers whose product has a manufacturing defect, design defect, or does not conform to its express warranties, even if they prove that they have not been negligent or fraudulent while making the express warranty for the product under the lens.

3. E-commerce transactions under the purview of the Act: In tune with the times, the CPA, 2019 includes the new buyer-seller relationships expanding the definition of



IMAGE: PIXABAY

Dedicated laws to protect the digital consumer.



Businesses will now need to give their 100 percent to consumers.

'Consumer' to include any person who buys goods or services, whether offline or through electronic means, teleshopping, direct selling, or multi-level marketing. Also, New Rules exclusively to govern e-commerce transactions have been enforced.

4. Penal provisions for misleading advertisement:

With the spiraling growth of influencer market on social media, the CPA, 2019 has made the right move by specifying penal provisions for misleading advertisements that falsify claims. Fine of up to Rs 1 million and imprisonment of up to 5 years can be imposed for such flouting of norms. Under the new law, celebrity endorsers will also be held liable for misleading advertisements. Now the onus of verifying the veracity of the claims made in advertisements of the products endorsed by them would be on celebrities. In case of a misleading advertisement, Central Consumer Protection Authority (CCPA) can impose a penalty of up to Rs 1 million on the endorser. Additionally, endorsers found guilty can be prohibited from endorsing any product or service for a period of 1 year. This period of prohibition can be extended up to 3 years if the endorser is found to have indulged in a subsequent offence.

5. E-filing of complaints allowed: Consumers now

enjoy greater flexibility in filing complaints. They can file such complaints at the consumer forum located at the place of their residence or work. They can also file complaints electronically. Additionally, the hearings can be conducted through videoconferencing.

6. Alternate dispute resolution: The introduction of mediation as an Alternate Dispute Resolution mechanism makes the process of dispute resolution simpler and quicker. It provides for establishment of Mediation Centres at the central and the state levels for cases where the forums anticipate settlements may be reached between the parties by way of mediation.

Conclusion

The Act 2019 is modern and comprehensive and is in tune with the times. It plugs the gap in the old Act and comes at a crucial time where consumers are exposed to global markets and need more consumer-centric laws to protect their rights. The implementation of the provisions of the Act will surely make the Indian consumer the king/queen. It will now be the sellers, manufacturers and advertisers who will need to beware of this new empowered consumer. ▶

Source: Secondary research and media reports

“**The Act has overhauled the provisions of the 1986 Act and made the consumer the priority**”



K. K. Rai, Senior Advocate, in conversation with The Aware Consumer decodes the Consumer Protection Act, 2019 and explains the finer nuances of the legislation.

Q In the rapidly evolving consumer space and globalized markets, will the new law provide adequate consumer protection covering the varied sectors of commerce?

The rapid transformation and expansion of the market into the cyberspace has been one of the major reasons for enactment of the Act of 2019. The Act has overhauled the provisions of the 1986 Act and made the consumer the priority. It has also widened its ambit to protect consumers of e-commerce as well and seeks to protect their rights in the new global marketplace which is evident from some of the following provisions introduced by the new Act:

- The definition of 'unfair trade practice' [S.2(47)] has been expanded to include electronic advertising which is misleading.

Refusing to take back/withdraw defective goods or withdraw/discontinue deficient services and refund consideration or to disclose to other persons any personal information given in confidence by the consumer, are also regarded as unfair trade practices under the new Act.

These provisions would result in greater transparency and better protection overall for the consumer.

- Considering the fact that nowadays online sale and purchase of food products is widespread, the definition of 'goods' has been expanded to include 'food' [S. 2(21)] as defined under S. 3(1) of Food Safety and Standards Act, 2006.

- Telecom' has been added to the definition of 'service' [S. 2(42)].

- The concept of 'Product Liability' [2(34)] has been introduced whereby manufacturers and sellers of products or services are now liable to compensate the consumer for any harm caused to a consumer due to the defective product/deficient service.

Product liability being extended to sellers [which expression includes service providers as per S. 2(37)] means that e-commerce platforms such as Amazon, Flipkart etc. will also be liable to ensure that counterfeit products are not sold through their website which is presently very rampant.

Liability could not be fastened to them under the old Act. This will lead to an increased number of consumers being able to seek relief under the Act.

- It is important to note that the concept of compensation being awarded to the consumer either on account of negligence of the opposite party or in a Product Liability Action in case of harm caused to consumer by a defective product or service has been introduced in the new Act. There was no provision for the compensation in the old Act. Previously, the consumer had to pursue his claim for compensation before the Civil Court which could take years.

- Consumer rights' have been elaborately defined [S.2(9)].

- The new Act (Ch. III) also provides for establishment of The Central Consumer Protection Authority (hereinafter



“CCPA”) to regulate matters relating to violation of rights of consumers, unfair trade practices and false and misleading advertisements which are prejudicial to the interests of consumers and to promote, protect and enforce rights of consumers as a class. It has an investigation wing to conduct inquiry or investigation under the Act. Setting up of such a protection agency would further protect consumers' interests.

Q The Covid-19 pandemic brought to fore the arbitrary pricing in healthcare forcing the government to step in. Does the new law provide mechanisms to protect consumers from such exploitation?

The 2019 Act did contemplate exploitation by means of unfair or arbitrary pricing and has introduced the following provisions to protect the consumer from it:

- Section 2(9)(iii) which lays down that it is a consumer's right to be assured, wherever possible, of access to a variety of products or services at competitive prices; and,

- The Act seeks to prohibit and provide redressal against 'unfair contracts' which as defined under Section 2(46) include the following kinds of contracts-

- o Contracts requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations;

- o Contracts which impose on the consumer any unreasonable charge which puts the consumer to a disadvantage.

The concept of 'Product Liability' has been introduced whereby manufacturers and sellers of products or services are now liable to compensate the consumer for any harm caused to a consumer due to the defective product/deficient service.

– K.K. Rai, Senior Advocate

As yet another protective measure CCPA is empowered to inquire or investigate into allegations of violation of consumers' rights or unfair trade practices either suo motu or on a complaint or on directions from the Central Government. Therefore, prompt action by CCPA and Central Government would help keep a check on arbitrary pricing.

Q Will the new law make the redress process speedier and more effective? How?

With a view to improve accessibility and reduce time taken in grievance redressal, the Act of 2019 has introduced the following measures-

- The pecuniary jurisdiction of the District Commission has been increased from Rs. 20 lakhs (under the 1986 Act) to Rs. 1 crore [S. 34(1)].

This would benefit consumers especially in rural and suburban areas as a much larger number of disputes can now be filed at the district level (which are more accessible as compared to State Commissions) as opposed to earlier where for claims above Rs. 20 lakhs, the consumer would have to travel to the concerned State Commission.

This provision would also have the effect of reducing the burden on the State and National Commissions quite possibly also improving their efficiency in terms of disposal of pending complaints.

- The Act has also relaxed the provision relating to filing of complaints before the State and District Commissions by enabling complaints to be filed where the complainant resides or personally works for gain [S.34(2)]

This is in contrast to the 1986 Act as per which complaints had to be instituted where the opposite party resided or conducted business. This would again benefit the consumers who can now file the complaints in the place where they reside, eliminating the need to travel to other places to file complaints.

- The Act now provides that the question of admissibility of the complaint is to be decided within 21 days from date on which the complaint is filed. If the same is not done, the complaint shall be deemed to have been admitted [S.36(2)]

This would ensure that the complaints do not hopelessly linger around at the pre-admission stage.

- The Act has also enabled hearings to be convened via video conferencing. This would obviate the need for the physical presence of the parties wherever it is avoidable.

- Mediation has been introduced to settle disputes between the parties. The Act provides for the establishment of a consumer mediation cell which would be attached to the District, State and National Commissions. [S. 74]. The Consumer Commissions can refer the parties to mediation. This would save time and effort for consumers who up until now did not have an alternative and had to pursue complaints in long drawn out litigation.

- Previously, consumers seeking compensation for loss/injury sustained had to pursue such claims for compensation before the civil court, which turned out to be a cumbersome process. Since by virtue of the 2019 Act, Consumer Commissions have now been empowered to award compensation to the consumers, they need not seek such remedy in the civil court, thereby saving time and effort.

- Appeals from orders of State Commissions to National Commissions can only be made where the case involves a substantial question of law [S. 51].

This would go a long way in obviating frivolous appeals which large corporations being opposing parties in the Consumer Fora tend to file when the order is unpalatable to them and thereby keep the relief granted to the consumer in abeyance. It would also save the consumer time and money in compulsorily pursuing such frivolous litigation.

- Lastly, appeals from the orders of the National Commission to the Supreme Court can lie only in cases where the complaint has originally been filed before the National Commission [S. 67]. This does away with the old system whereby any complaint originating at the District Forum could go all the way up to the Supreme Court, leading to humongous delay in obtaining relief.

Q The new law requires some major rehauls of the existing consumer protection mechanisms down to the districts. Are the states equipped to ensure the law does not become a paper tiger?

As mentioned hereinabove, the Act has made elaborate and comprehensive provisions for mediation. It is, however, the responsibility of the State Government to establish, by notification, a consumer mediation cell at the District and State Commissions of the State concerned. Therefore, promptness by the State Government in establishing the cells expeditiously is of utmost importance else it would render mediation a false promise.

The States must ensure that the 21-day time limit to decide admissibility of the complaint is strictly adhered to. The District and State Commissions must be monitored to ascertain that their procedural rules are amended accordingly to reflect this change and to also implement it.

The States also need to be ramp up the infrastructure at the District and State Commissions so as to ensure smooth conduct of proceedings via video conferencing.

Q What would be the responsibilities incumbent upon the state governments to ensure implementation of the provisions of the new law in letter and spirit?

In addition to the measures required to be taken by the State as mentioned in the answer to question (4), the States must also make it a point to put in place sufficient checks to ensure that e-commerce platforms make full disclosures about the products or services they offer as required to do under the Act by framing effective guidelines, if need be with consultation of CCPA.

The States must also spread awareness about the rights, both new and existing, of the consumers, which has itself been recognized as the consumers' right under S. 2(9)(vi) of the 2019 Act.

However, it would be important to note that not just the State Government, the Act of 2019 also requires vigilance on the part of the Central Government. As mentioned earlier, CCPA is empowered to inquire/investigate into violation of consumers' rights or unfair trade practices on directions from the Central Government. Therefore, vigilance on the part of the Central Government would also go a long way in protection of consumer's interests under the Act.

Q With digital consumption increasing and percolating down to the rural level and the diverse nature of digital frauds and crimes, does the new law provide enough safety net for the consumers at all levels?

As stated earlier, the Act has overhauled the provisions primarily with a view to address e-commerce transactions. Product liability introduced by the Act makes e-commerce platforms/websites liable (as product sellers/service providers) to compensate the consumers who have suffered harm as a result of defect/deficiency of the goods or services.

The Act also makes it incumbent upon manufacturers as well as service providers (which would include e-commerce platforms) to ensure that counterfeit products are not permitted to be sold by them.

The definition of 'goods' has been amended to bring food (which is also being sold via e-commerce) and telecom within it. Electronic advertising which is misleading, has been made an unfair trade practice under the Act. Considering that electronic media and advertising are now quite prevalent in rural areas and influence consumers' preferences qua products and services and e-commerce is also gradually making inroads into suburban and rural India, this measure would provide better protection to consumers in such areas which was hitherto missing from the country's consumer protection law.

Q There is the CCPA and there are the tiered CDCRs. Wouldn't the CCPA be an infringement upon the powers of the state governments and the CDCRs?

The powers and functions of CCPA basically include

promoting awareness of and protecting consumer's rights, prevention of unfair trade practices, ensuring no misleading advertisement is made of goods or services.

Under the Act, CCPA is to function under the auspices and directions of the Central Government. Its role as a guardian of consumer rights can at best be regarded as being in supplementation to and not infringement of powers of the State Governments. CCPA is empowered to only advise the State Government on consumer welfare measures.

As far its role vis-à-vis the Consumer Commissions is concerned, their functions under the Act cannot be equated. The Commissions serve as grievance redressal fora. They are empowered to take punitive action and provide relief (which under the 2019 Act also includes compensation) only when the aggrieved consumer approaches them with a complaint.

CCPA, it can be said, has been set up as a watchdog of sorts, for the protection of consumers' rights. It cannot be said to be strictly a grievance redressal forum. It has the power to inquire/investigate violations of consumer rights or unfair trade practices either suo motu or on a complaint or on directions of the Central Government. Upon conclusion of such investigation, it may order for recall of goods, or take action against false and misleading advertisements. Such pre-emptive power of investigation and inquiry is not vested in the Consumer Commissions.

Besides, CCPA can also issue necessary guidelines to prevent unfair trade practices, advise Ministries and Departments of the Central and State Governments on consumer welfare measures, review factors inhibiting enjoyment of consumer rights including safeguards provided for protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation. The Consumer Commissions are not vested with such powers.

Although CCPA may file complaints/intervene in proceedings before the Consumer Commissions, aggrieved consumers cannot file complaints before CCPA for reliefs such as refund of consideration/refund of goods/compensation for which they have to approach the respective Consumer Commissions. The three-tier Consumer Commissions are the only grievance redressal mechanism under the Act.

Therefore, it cannot be said that powers and functions of CCPA would in any way conflict with those of the Commissions. Their roles under the Act are distinct and clearly defined leaving no room for ambiguity in that regard.

Q Laws in India are cumbersome and time-consuming deterring common-citizen-consumer to take recourse to it. How does the new law counter this?

The new Act of 2019 has attempted to plug the loopholes that led to inordinate delays and were even otherwise cumbersome qua the consumers. As already explained at length in the answer to Question (3), the



introduction of mediation, enhancement of the pecuniary jurisdiction of the Consumer Commissions, permitting the filing of complaints at the place of residence of the complainant/consumer, laying down of a mandatory 21-day time limit for adjudicating admissibility of the complaint, restricting the scope of appeals from State Commissions to National Commission and from National Commission to Supreme Court would have the effect of significantly tilting the consumer grievance redressal mechanism in favor of the complainant/consumer.

Q How does the new law compare with international consumer protection laws? Please give some examples.

The overhauling in the consumer protection law brought about by the Act of 2019 has resulted in significant provisions, which were found in consumer legislations in other parts of the country, being introduced in India for the very first time. A few significant comparisons have been set out below to illustrate this point:

- The United States:

CCPA as established by the Act of 2019, in terms of its powers and functions, is similar to the Federal Trade Commission (hereinafter 'FTC') which is the consumer protection authority created under the Federal Trade Commission Act, 1914.

Like FTC, even CCPA is empowered to investigate unfair activities (such as false and misleading advertisements) and on conclusion of such investigation, it may take action to prevent such activities by recall goods/discontinue services which are unfair and prejudicial to consumers' interests and imposing penalties in respect of false or misleading advertisements (in the case of FTC, it resorts to passing of cease and desist orders).

While FTC is authorized to make trade regulation rules that specifically define unfair or deceptive trade practices,

CCPA can issue necessary guidelines to prevent unfair trade activities and protect consumers' interests, advise Ministries and Departments of Central and State Government on consumer welfare measures.

However, there are bodies similar to FTC exercising jurisdiction at the State level in the United States but there is no State-level counterpart of CCPA even under the new Act. It remains to be seen whether setting up of such agencies in the States would be necessary at a later point.

- United Kingdom:

In the United Kingdom, the Consumer Rights Act, 2015 seeks to protect consumers against contracts which have "unfair terms" which is defined under S. 62 of the Act as "a term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer".

Correspondingly, the 2019 Act has also introduced the concept of an "unfair contract" under S. 2(46) which is defined along similar lines as "unfair terms" and denotes a contract between a manufacturer or trader or service provider on one hand and a consumer on the other, having such terms which cause significant change in the rights of such consumer eg. entitling a party to unilaterally terminate a contract without reasonable cause, permitting one party to assign the contract to the detriment of the consumer without his consent.

As is evident, this is aimed at protecting consumers from unilaterally skewed and unreasonable contracts which lean in favor of manufacturers or service providers.

- Australia:

Though the concept of the 'Product Liability' under the Australia's Competition and Consumer Act, 2010 has only now found a place in India by way of the 2019 Act, 'Product Liability' as defined under the new Act is wider in its ambit and fastens liability on the seller as well which is in contrast to the Act of 2010 which makes only the manufacturer of the defective product liable to pay compensation to the consumer.

- France:

As in the case of France which provided for alternate dispute resolution under the French Consumer Code (introduced through an amendment in 2014), the 2019 Act has now provided a comprehensive mechanism for mediation.

Q It has been noted that while international companies give high compensations to consumers in developed countries in cases of litigation, the same is not true in countries like India. Will the new law ensure that in cases involving MNCs, Indian consumers are treated at par with their global counterparts?

While awarding compensation, the Courts have taken several factors into consideration including personal income of the person who has suffered personal injury in certain cases. The principles governing damages are the same. However, the amount may differ considering various factors. The Commission will have to play a role in developing new frontiers of compensation. ▶

“**The Act of 2019 is revolutionary and is set to transform the Consumer Jurisprudence**”



Sukumar Pattjoshi, Senior Advocate & Former Vice-President Supreme Court Bar Association tells *The Aware Consumer* that the new Act is much better equipped to protect consumers.

Q The Consumer Protection Act, 2019 is expected to strengthen the rights of the consumers. How does the new law provide better consumer protection than the previous law?

The Consumer Protection Act 1986 laid an excellent foundation for better protection of interest of consumers with some framework and mechanism and proved useful in achieving the goals enshrined in the preamble. Meanwhile, the consumer market of goods and services has undergone drastic changes. The reach of the market has increased with the development of e-commerce and emergence of a global supply chain of goods and services touching almost every sphere of life.

Due to the diminishing market morality the consumer is flooded with misleading advertisements, unfair and one-sided terms of contract particularly in situations involving multi-level marketing, telemarketing, direct selling and e-commerce. There is little choice to disagree with the one-sided standard terms, for completing the transaction. These factors aggravated the inequality in bargaining power between the supply side (goods and service supplier) and demand side (consumer) which necessitated and culminated into a robust and renewed Consumer Law in the form of Consumer Protection Act 2019.

The Act of 2019 is revolutionary and is set to transform the Consumer Jurisprudence and is much better equipped to keep the consumers protected from the evil effects of the expanding market. The consumer friendly features in Act of 2019 which will ensure better protections are broadly as under:

I. The introduction of CCPA (Central Consumer Protection Authority) with wide powers to investigate, promote, protect and enforce the Consumer Rights, which can additionally intervene to prevent harm to consumers arising from unfair trade practice, initiate class action for the benefit of consumers as a class by enforcing recall, refund and replacement of product. The introduction of CCPA eases the task of consumer as a class to approach the Consumer Court or any other Court by way of PIL after mustering evidence in support. CCPA is empowered to order investigation and direct the supplier, manufacturer to provide necessary evidence.

II. The consumer has been further empowered by ease of filing complaints with the District Commission within whose jurisdiction he resides or is gainfully employed.

III. Even the consumer complaint can be filed electronically, which will reduce the logistical and jurisdictional challenges and make it truly inexpensive.

IV. The Act also has simplified the consumer dispute adjudication process by enhancing the pecuniary jurisdiction of Consumer Dispute Redressal Commission so that higher claims can be filed with the nearest District Commission.

V. There is no fee for instituting a complaint up to Rs 5 lakh.

VI. Hopefully the redressal and closure of disputes will be faster as to ensure timely disposal and to discourage



unnecessary adjournments the Act provides for imposition of cost by the Commissions for adjournments. Filing of frivolous appeal is also discouraged by stipulation of deposit of 50% of the awarded amount as precondition for hearing of appeal of the opposite party. With the objective of early settlement, settlement through Mediation has been incorporated.

VII. There are three new additions in the definition of unfair trade practice viz. (a) if the buyer is unsatisfied with the product, he can return the product within 30 days and in case the seller doesn't accept the return, the same would amount to unfair trade practice, (b) In case any personal data of the buyer taken for lottery etc., related to sale, is revealed by the seller for its own purpose, the same amounts to unfair trade practice & (c) If no receipt towards purchase of a product is given, the same would amount to unfair trade practice.

VIII. The Act provides for penalties and offences for adulterated products and spurious goods, etc. Special provision has been made to stop unfair trade practice in e-commerce and direct selling, etc.

IX. The consumer is now entitled to make claims for compensation under product liability for harm suffered due to defective product or manufacturing defect in product or service sold to him/her.

X. Provides for regulating misleading advertisements and penalty for misleading advertisements if it causes prejudice to the consumer's interest. Action can be taken by the Central authority against the manufacturer, trader, endorser, advertiser or publisher as the case may be.

XI. SCDRC AND NCDRC have been empowered to declare any unfair terms of contract as null and void.

Q The rising usage of digital commerce by consumers requires that their rights as digital citizens are also protected. Does the new law provide sufficient protection to digital consumers?

As stated earlier, in response to the previous question, the Act is aimed at providing a safe marketplace to all consumers including digital consumers. I do not notice any special protection of 'rights' as digital citizens; may be except for the right to file complaints by electronic mode. As I understand, rights of digital citizens are much broader and markedly different from rights of digital consumers. The new law provides the same protection to all consumers including the digital consumers and additionally a seller on an e-commerce platform under the new Act gets to provide all the details of goods and services including its source and other relevant details for enabling the digital consumer to make an informed decision, before purchase of the product. It's too early to comment on the adequacy of the protection under the Act.

Q How does the presence of Central Consumer Protection Authority (CCPA) impact consumer protection in the country and the states? Do you think CCPA is essential or does it infringe upon the constitutional rights of the State Governments?

For the effective and better protection of consumers by the state itself, creation of CCPA is a very welcome and appropriate measure. The objective is to protect consumers as a class from inferior or unsafe products, menace of misleading advertisements and unfair practices. The Regulator such as CCPA will be effective to regulate the suppliers:

- to engage in fair competition
- to provide full information of the product
- to observe all laws regarding safety and quality
- to compensate to the consumer if any problem arises with the product

Also it may bring about:

- i) economic efficiency by ensuring markets for high quality product at competitive price only
- ii) secure the individual right of citizens to be treated with dignity by the market

So far as the question regarding infringement of State's constitutional right is concerned, I do not see any such infringement. The Act has been legislated to protect the rights and interest of the Consumer nationwide, the uniformity in the applicability of the Act does not affect the right of the State. Even otherwise, the mechanism involves reference to other regulators created under any other law.

Q There are criticisms that even as consumers are suffering due to overpricing of products and services, especially during the pandemic, the laws failed to



have the desired effect. Do you think the new law will plug the loopholes on such issues?

The price rise in such situations arising out of pandemic may be due to various reasons and if they are due to restrictive or unfair trade practices, the Act is well equipped to provide the remedial measures. However, the procedure for availing the remedies are the same as during normal time and measures for extraordinary situations have not been contemplated. However, if the regulator like CCPA is in place, it can intervene and regulate. The Act is not aimed at tackling problems of emergent situations for which States as well as Central government may come up with special measures from time to time, which has not been envisaged in the CPA.

Q While on paper the Act promises speedy redress for consumer grievances, the on-ground reality is far from it. Why do you think despite laws consumer protection is not very strong in India?

The speed of redressal of any grievance, whether industrial, civil, consumer or even criminal trials, depends on various factors, e.g., will and policy of the Government, infrastructure, which would include physical space, prompt appointment of adjudicators, staff, etc. The delay in disposal of cases is almost uniform and is subject matter of a larger debate and has to be dealt with in detail and merely a change in statute cannot expedite the disposal of the growing number of disputes. However, the new Act has provided for Mediation which may ease the pressure on the inadequate infrastructure to a great extent.

However, I do not agree that the law of consumer protection is not very strong in India, if you look at the large number of disposal of complaints despite grossly inadequate infrastructure. The Consumer Protection Act provides for endeavour to dispose of consumer complaints within 90 days from the service of notice to other parties. Speedy and inexpensive disposal is also one of the important objectives of the Act. The stringent time limit to file replies by the opposite party is also a pointer to the intention of the legislature to provide for speedy redressal. The Act also allows the consumers to



get their grievance redressed through an alternate dispute redressal mechanism i.e. through Mediation.

Q What are some of the steps that state governments should take to strengthen the rights of consumers and ensure speedy justice to them in the light of the new law.

In my view, there is a requirement for increase in infrastructure relevant for proper and timely disposal of consumer disputes e.g., providing suitable working space, timely appointment of adequate staff to handle the number of consumer complaints, well-thought out criteria of appointment of adjudicators. According to me, regular adjudicators like judges and bureaucrats as regular appointees should be inducted. Consumer Commissions are continuous bodies like courts and are not created for a particular period and hence the adjudicators should not be only from amongst retired judges and bureaucrats to be appointed only for a short tenure. This will also enable growth in redressal techniques and orientation.

There should be adequate training and skill imparted to the professionals involved in adjudication of consumer rights. Similarly the consumer protection can be strengthened by spreading consumer awareness amongst the people, particularly in rural areas and encouraging their spirit to bring their grievances to the authority, by treating them with dignity.

Q Not many states seem to be prioritizing consumer protection. How would you rate consumer protection in various states?

Yes, it is deplorable in various states. Not many states seem to have proper infrastructure and facilities. Presently even UT of J&K is without Consumer Commissions.

Q Do homebuyers have adequate protection as consumers in India? There are opinions that RERA has curtailed jurisdiction of consumer forums. Doesn't this weaken consumer protection?

In my view, home buyers have adequate protection as consumers in India. Now it is even better and stronger with the specific power of the Commission to declare the

unfair terms of the contract as null and void. With the jurisdiction of District Commission enlarged to where the complainant resides or is gainfully employed, as well as the enhancement of pecuniary jurisdiction, I do not agree with any opinion that RERA has curtailed the jurisdiction of consumer forums. On the other hand, RERA also provides a forum for homebuyers without curtailing jurisdiction of Consumer Fora. From experience I can say that despite RERA, the number of complaints by homebuyers has steadily increased in the Consumer Fora because of its interface with several sectoral laws including that of RERA.

Q How would you rate India's consumer laws vis-a-vis international consumer laws. Can you please highlight some examples?

Indian consumer law is in conformity with the UN Guidelines on consumer rights. Consumer laws in India are all encompassing and cover the rights of consumers across different sectors, such as, consumers of services in the field of insurance, health, medicines, housing, etc. Despite each sector being governed by different sectoral laws and most of which also provide for redressal of grievance, India has a specialised three tier redressal system for all consumer disputes; at District level, State level and National level and the remedies provided are in addition to the remedy provided under any other law. In some parts of the world, though the consumer movement is much marked, there is no special forum dealing with only consumer dispute redressal. Therefore in my view, India is equipped with specialised consumer law and is quite comparable with the best in the international consumer law system but for the appalling delay in redressal due to reasons as discussed earlier.

Q Do you think any areas have been left out of the purview of the new law which can impact consumer protection?

It is difficult to point out as to what has been left out as the new Act is a result of meticulous efforts of lawmakers. But as a practising Senior Advocate, I feel provisions for proper consumer education and wide publicity of consumer rights could be mandated. That in certain cases like medical negligence, infringement of data protection, should be included in the definition of Consumer, irrespective whether any consideration has been paid by them or not. Otherwise it justifies the negligence of a doctor in a hospital which is rendering service free of charge. Similarly, the consumer loses his valuable right to seek redressal against the misuse of personal data. I also feel that deficient service rendered by State sponsored educational institutions, healthcare service providers and civic bodies, who are responsible for providing civic amenities, should be made actionable under the Consumer Protection Act irrespective of service availed without any payment of consideration. Time has also come to welcome and empower a digital citizen to participate in consumer protection governance. ■

CORONAVIRUS

COVID-19

Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus.

Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness.

The best way to prevent and slow down transmission is be well informed about the COVID-19 virus, the disease it causes and how it spreads. Protect yourself and others from infection by washing your hands or using an alcohol based rub frequently and not touching your face.

The COVID-19 virus spreads primarily through droplets of saliva or discharge from the nose when an infected person coughs or sneezes, so it's important that you also practice respiratory etiquette (for example, by coughing into a flexed elbow).

At this time, there are no specific vaccines or treatments for COVID-19. However, there are many ongoing clinical trials evaluating potential treatments.



SYMPTOMS

COMMON SYMPTOMS INCLUDE:

- fever
- tiredness
- dry cough.



OTHER SYMPTOMS INCLUDE:

- shortness of breath
- aches and pains
- sore throat
- and very few people will report diarrhoea, nausea or a runny nose.

People with mild symptoms who are otherwise healthy should self-isolate and contact their medical provider or a COVID-19 information line for advice on testing and referral.

People with fever, cough or difficulty breathing should call their doctor and seek medical attention.

PREVENTION

To prevent infection and to slow transmission of COVID-19, do the following:

- Wash your hands regularly with soap and water, or clean them with alcohol-based hand rub.
- Maintain at least 1 metre distance between you and people coughing or sneezing.
- Avoid touching your face.
- Cover your mouth and nose when coughing or sneezing.
- Stay home if you feel unwell.
- Refrain from smoking and other activities that weaken the lungs.
- Practice physical distancing by avoiding unnecessary travel and staying away from large groups of people.

**Helpline Number Toll free: 1075
+91-11-23978046**

Email : ncov2019@gov.in • ncov2019@gmail.com

AFTERWORD



Pyush Misra
Director,
Consumer Online Foundation

Overall low consumer awareness is certainly a cause for concern, however, there is also a discernible trend of rising sustainability awareness and concerns guiding product choices.

IMAGE: PIXABAY



**Consumer is the king,
but not without knowledge of
their rights under the laws.**

Aware Consumer Is Empowered Consumer

A SURVEY CONDUCTED in March in Vijaywada found only 25 per cent of people in the city are aware of their consumer rights. It is estimated that in the entire state of Andhra Pradesh a maximum of 40 per cent of the urban population and 10 per cent of the rural population are aware of consumer rights. This could very well be representative of other states in the country depending on the level of education, as according to consumer experts the main reason for low consumer awareness among people is lack of education to majority of masses.

Rising sustainability concerns

Despite the apparent low levels of consumer awareness in the country, it is heartening to note that rising concern for sustainability is changing consumers' purchase preferences. Now their shopping cart decisions are based on social responsibility, inclusiveness, or environmental impact.

While sustainability concerns are influencing consumer behavior among more than half the population, here again we note the lack of awareness marring their behavior for despite intentions to be sustainable, there exists a gap between what consumers think they know, and what they actually know about sustainability.

These findings are from a report from the Capgemini Research Institute that examined the impact sustainability has on consumer purchasing patterns and how well

consumer product and retail (CPR) organizations understand consumer expectations.

Sustainability has risen up in the customer's agenda with 79 percent of consumers changing their purchase preferences, reports the study. In part, the credit for raising consumer awareness on sustainability also goes to Covid-19 as it has increased consumer awareness and commitment to buying sustainably. The report found 67 percent of respondents saying they will be more cautious about the scarcity of natural resources due to the pandemic, and 65 percent intending to be more mindful about the impact of their overall consumption in the new normal.

The 'Consumer Products and Retail: How sustainability is fundamentally changing consumer preferences' reports 53 percent of consumers of all and 57 percent in the 18-24 age group are actually buying lesser known brands because they are sustainable.

Sustainability however is not a superficial concern for consumers as more than half of the respondents (52 percent) said they share an emotional connect with products or organizations that they perceive as sustainable and 64 percent feel happy about their purchases. The numbers are higher in the age-group 25-35 at 72 percent.

However, what consumers think they know about sustainability and what they actually know about it are



IMAGE: PIXABAY

Companies must talk about their sustainability efforts to educate consumers and inform their purchase decisions.



IMAGE: PIXABAY

Sustainability is guiding consumer choices increasingly.

different indicating gap in consumer awareness. The study found 78 percent of consumers have no idea that to produce a chocolate bar, 1,000 liters of water is consumed, and 68 percent have no knowledge that an average burger results in more emissions than driving 15km in a big car.

Notably, consumers are willing to give up on these unsustainable products they can access more sustainable products as indicated by the report that found nearly 68 percent of consumers willing to switch preferences to more sustainable alternatives.

The consumer products companies too are realizing the benefits of sustainability on consumer relationships and 77 percent indicated sustainability leads to increases in customer loyalty, while 63 percent say it increases brand revenue.

The findings indicate the need to make sustainability-related information about products widely available to consumers and reinforces the importance of brands in driving the sustainability agenda. However, retailers and manufacturers too exhibit a knowledge gap regarding consumers sustainability awareness of their products as 65 percent of executives say their consumers are very much aware of their sustainability initiatives, but 44 percent consumers say they do not trust product sustainability claims.

The perceptions of the consumers regarding sustainability claims of manufacturers is not far off the mark as nearly 80 percent of organizations are more concerned with the impact on margins or cost overruns in scaling sustainability initiatives and for almost three in four organizations, other issues take priority. Also, while three out of four organizations claimed to have a strategy, infrastructure, and resources in place to drive sustainability and circular economy efforts, less than one quarter of organizations have deployed such initiatives company-wide which would guarantee wider impact. The two areas where most organizations seemed to have scaled initiatives are fair labor policies and safe working conditions with 48 percent of organizations claiming success.

Conclusion

Government and consumer bodies must undertake aggressive consumer awareness campaigns to plug the gaps in consumer education. Introducing consumer awareness as a chapter in school curriculums must also be considered. ▶

Source: Secondary research & media reports

STUDENT AS A CONSUMER

Is the student a consumer and are educational institutions service providers? It is time to take a fresh look at the evolving education space and ensure students are not denied their rights as consumers.



IMAGE: PIXABAY

Should students be treated as consumers and allowed redress mechanisms?

THE CONTROVERSY SURROUNDING

open book examination in the Delhi University reached the courts with students, teachers and the governments divided in their opinions. The Ministry of Human Resources Development is insistent that based on the new University Grants Commission (UGC) guidelines, final year examinations in all universities and institutions be held during the pandemic. The debate rages on not just if an open book examination should be held, but if an examination should be held at all at this time; and also, on whether open book examination is at all suitable for the pedagogy methodology followed in Indian universities. Can open book examinations be the way out of the student evaluation crisis at such a juncture? However, this is not the issue we will look at here.

The current conundrum has given rise to larger concerns that we have been habitually brushing under the carpet. It has put a question mark on our entire higher education system and more specifically on the rights of students as consumers.

The growth in the Indian education sector has led to an erosion of quality as innumerable private institutions proliferate across the nation. Managed by private boards that function as corporates and are motivated by profit, education has today become more a race for accreditation and affiliations with foreign universities to attract students rather than a focus on the quality of the education imparted within. Students who pay hefty fees to get admission to these institutions are finally left wondering as to what is their actual gain in terms of learning and prospects of a career?

Is a student a consumer?

If we look at the definition of the term "consumer" in Section 2 (1) (d) of the Consumer Protection Act, 1986 wherein a consumer has been defined as: "any person who buys any goods for consideration or hires/avails any services for consideration" and the new Consumer Protection Act, 2019, that provides



IMAGE: PIXABAY

Can education be treated as a social enterprise in today's commercialized educational environment?

protection to the interests of the consumers and aims at resolving their disputes, it is very clear that a student falls within its purview. A student is availing a service, that is educational service, in exchange for a fee paid which he pays to the service provider. Education provided against a fee is hence a service. This grants students the right to approach a consumer forum in case of a failure by the educational institution in the grant of this service.

An institute that receives the fee from the student but fails to conduct the examination, fails to provide basic educational facilities and indulges in false advertisement to misguide students and lure them to take admission – all such acts of the institution amount to deficiency in service. Several cases have come to light where institutions are functioning without the requisite affiliations. Inadequate facilities not only amount to deficiency in services but the false advertisements that institutions resort to promotes unfair trade practice as well.

Educational institutions even refuse to refund fee deposited in connection with an admission in case a student fails to take admission due to some reason. In such cases, it is the obligation of the institute to refund the fees received by it, as a refusal to do so amounts to unfair trade practice and deficiency in services.

Over the years, several judgments have emphasized the nature of educational services in return for a fee as services and students as consumers who can drag institutions to court for deficiency or failure in services provided.

Do educational institutions fall under the purview of CPA?

A number of decisions delivered by state and national level consumer forums have considered educational institutions as service providers and their rulings have granted aggrieved student-petitioners relief in cases regarding fee, mistake in allotment of roll numbers, delay in result, admission over and above allotted quota, misrepresentation about affiliation, etc. These judgments have established that the student is a consumer as per the Act and the universities or educational institutes are service providers.

However, the Supreme Court of India has provided a differing view in various cases. In the case of Maharshi Dayanand University v. Surjeet Kaur, it held that education is not a commodity and educational institutions are not providing any kind of service and therefore in matters such as admission, fees etc., a question of deficiency of service does

not arise. Also, consumer forums cannot entertain such cases under the CPA. In the Bihar School Examination Board v. Suresh Prasad Sinha, the apex court had observed that the education boards and universities are not service providers and the complaints against them are not maintainable. In another judgment in P.T. Koshy & Anr. v. Ellen Charitable Trust & Ors., the court followed the above views.

These judgments by the apex court have led to complexity and ambiguity. It is hence important to take a fresh look at the various functions of university/educational institutes to determine whether the activities of university/educational institutes can be classified under the conventional definition of service. In the current scenario, especially where big private universities are being set up backed up by commercial entities, it is clear that university is not a non-profit body. In fact, some business characteristics of the educational institution are inherent in the Statutes and Acts which govern the functions of the university as well.

However, the relationship between the student and teacher/university is not that of a purely commercial buyer-seller transaction. As the statutory duty of the university is fixed by pertinent Acts, rules and regulations, a student too must comply with the requirements fixed by



IMAGE: PIXABAY

Ambiguity surrounds the treatment of education.

the university in terms of its rules and guidelines to be able to claim any entitlement or compensation as a consumer of service under the CPA.

However, to hold the teacher-student relationship as the basis for deciding whether the nature of the activities of a university/institution should fall under the term "service" as per the CPA would be a fallacy as the teacher-student relationship is totally subjective. The student-university relationship is not an exact equivalent the relationship of consumer and service-provider, but given the commercial transactive nature of private universities especially, complaints against the universities/educational institutes must be maintainable in consumer courts on the ground that a student is a consumer, as long as the complaint is genuine.

Rights of the student

That students have certain rights is undeniable and it is important to acknowledge these entitlements of

the students under university/educational institutes. This is important to ensure that universities do not fail in their noble mission of providing quality education to students. Among the important rights of students which are essential to protect their interests in education are:

- Right to quality education
- Right to those benefits and services related to study that make the provision of quality education possible, for example, laboratory, library, study materials, etc
- Right to transparency in information related to terms and conditions of the university, fees, affiliation, quality standard and facilities provided in the university/institute, etc
- Right against exploitation of any kind in the university/educational institute
- Right to safety
- Right to a grievance redressal

Conclusion

Educational institutions are no longer guided purely by philanthropic and noble missions to provide quality education. With the entry of various corporate-backed institutions of higher learning, education has become a competitive field where each institution is trying to outdo the other through promises to students of better quality education and faculty, accreditations, affiliations, campus placements, facilities that include commercial food brands setting up shops on the campus, among others. Universities are now commercial establishments and hence must be ruled as such to ensure that the students who pay through their noses are not shortchanged. There must be a redressal mechanism that allows students to approach consumer forums as consumers of education and where universities are treated as service providers and can be pulled up for any deficiency in services provided to students at a fee. Time for a relook into this space. ▶

Source: Secondary research and media reports



Students have rights too.

IMAGE: PIXABAY

Should Healthcare Adopt A Consumer Rights-based Approach?

The omission of healthcare from the list of services in the Consumer Protection Act, 2019, has given rise to ambiguities regarding its treatment under the Act.

IMAGE: PIXABAY



*Healthcare is a basic human right;
but is it a consumer right?*

AS COVID-19 PANDEMIC takes a huge toll on the healthcare sector across the world, but especially in developing economies like India, it has given rise to a big dilemma – should there be a consumer rights-based approach to healthcare? The reason for this consideration unfolded and continues to unfold as the pandemic rages on. Primarily, the concern hinges on the numerous instances of medical negligence in the treatment of Covid-19 patients ranging from outright denial of treatment to Covid and non-Covid patients alike, sale of counterfeit pharmaceutical and non-pharmaceutical products and services in the name of Covid cure, fraudulent claims regarding efficacy of natural products as cure, inflated bills at hospitals, substandard amenities and unhygienic conditions, to the mistreatment of dead bodies, irregularities in disposing dead bodies and much else.

What the pandemic has thoroughly exposed is the near absence of an accountability mechanism to regulate medical negligence and malpractice. Notably, the Supreme Court has upheld medical care as a basic right and in various judgments, it also held that the right to health is a part of the right to life enshrined under Article 21 of the Constitution. Moreover, as India is a party to international pacts that recognize the right to life, the Supreme Court in its ruling in *People's Union for Civil Liberties vs Union of India 1997*, held that Article 21 must be interpreted in conformity with international law. In yet another judgment, the apex court held that the failure of a government hospital to provide a patient timely medical treatment results in violation of the patient's right to life. The court also upheld the state's obligation to maintain health services.

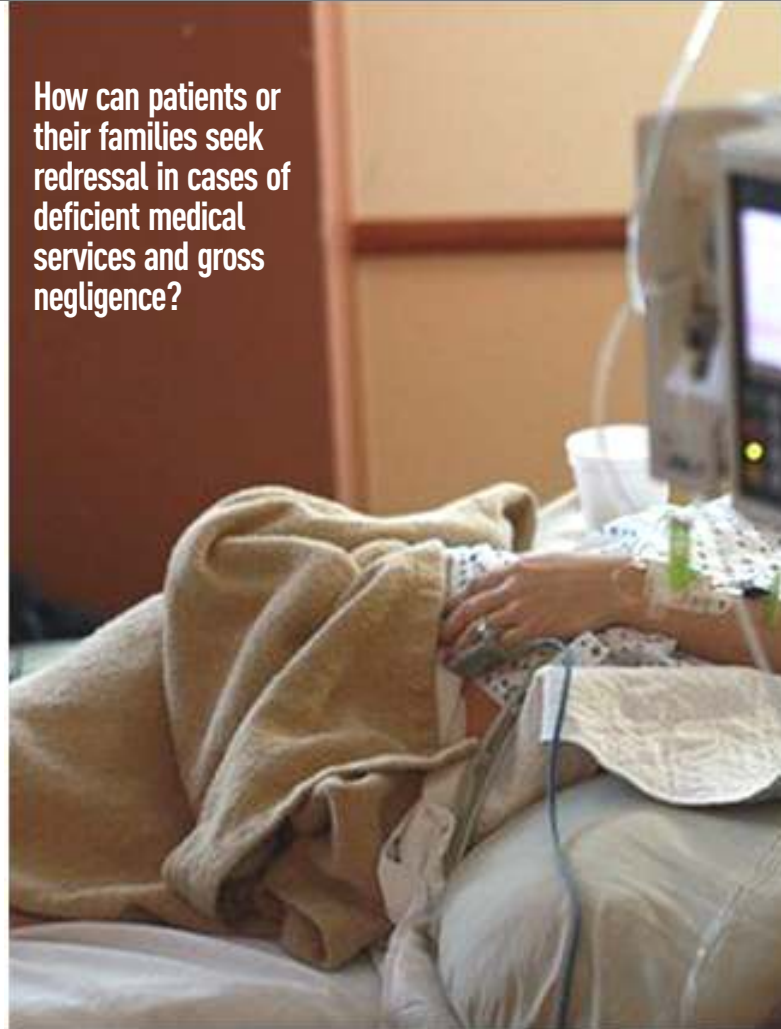
Despite these rulings, not many people seek redressal against medical negligence. Experts have suggested bringing healthcare services under the ambit of Consumer Protection Law. However, last June, "Healthcare" was removed from the list of services specifically mentioned in the draft Consumer Protection Bill, 2019, and it was largely perceived as a bid to allay the fears of the medical fraternity which had expressed apprehensions over the law being misused.

Healthcare as a consumer right

Those against the inclusion of healthcare under the Consumer Protection Act, 2019 argue that the relationship between a doctor and patient is different in nature from that of a buyer and seller. This is because the doctor-patient relationship goes beyond disclosure of information about the illness and treatment and is one of trust.

They also contend that medicine is a profession of nobility and not business and should not be looked at as an exact science as a lot depends on the judgement of the doctor treating the patient. Also, how an individual reacts to a line of treatment is not the same for all nor can it be predicted. The line of treatment that a doctor chooses to treat an illness depends on the available and disclosed facts. In medicine, there are no hard and fast rules

How can patients or their families seek redressal in cases of deficient medical services and gross negligence?



regarding treatment of diseases and although standards and protocol are maintained at the highest level in the profession, there is no guarantee of the outcome even after following the rulebook and despite years of practice and experience of the doctor. Cases can be complex.

Healthcare also entails a high degree of risk and complexity that can affect a person's health, life, and death. In many cases, doctors are required to treat the patient immediately to save life and there can be no guarantee for it. The critics feel that dragging the doctors to court for negligence or some such charges if the line of treatment fails despite their best efforts, would not only cause immense hardship for them but would also be demoralizing and a deterrent.

Further, both criminal and civil liabilities are applicable to doctors. Under Section 304A of the Indian Penal Code, a doctor can be charged for medical negligence resulting in the death of a person. Monetary compensation or disciplinary action can also be taken against an accused doctor if found guilty.

It is also important to note that under the new Act, cases can be filed even where the complainant resides, and since patients can seek treatment anywhere across



IMAGE: PIXABAY

the country, it would mean a healthcare professional would have to appear anywhere where the case has been filed and this would not be practical as they will have to leave their critical patients and practices to appear in courts. The higher pecuniary jurisdiction for the district forum to the tune of ₹1 crore would also enhance claims made in the forum.

Also, services of advocates have been kept out of the ambit of the Act and since there is much similarity in the nature of the two professions, it is only right to keep healthcare out of the purview of the Act too.

Why healthcare must be included in the Act

Those who would ideally like healthcare to come under the Act argue that any delay in medical care endangers life, and hence the hospital, staff and doctors who are responsible for ensuring timely treatment should be held to account. Medical services are also provided at the payment of a fee and should not be excluded from the purview of the Consumer Protection Act. Agreed that medical professionals must be protected from the violence and

anger of aggrieved patients and their families, but shouldn't the patients too, have a recourse if subjected to wrongful medical conduct, they ask.

The current pandemic crisis has exposed not just the inadequacy of the existing healthcare infrastructure, but also the greed and gross negligence of healthcare practitioners and hospitals. It is unfortunate that a section of medical professionals has brought disrepute at a time when they are being feted as corona frontline warriors.

As healthcare capacities are stretched it is important to create a balance between medical malpractice and violence against doctors. Some experts opine that any legislation to govern the medical profession's conduct must take into account the fundamental difference between consumers seeking healthcare and those seeking other services. The former are under psychological pressure and hence any trigger can lead them to violence against medical professionals. This necessitates a comprehensive protection legislation that has place for both the rights of doctors and the patients. Consumers' rights as patients need to be clearly delineated.

The pandemic has highlighted the role of management in a health crisis. Often poor managerial decisions are behind botched cases and it is the frontline doctors and nurses who have to bear the brunt. Transparency and accuracy of information are important considerations and there must be accountability in all dealings in the healthcare sector whether be it logistics, equipment, or hospital maintenance.

In any matter of medical negligence, evidence would play a great role. It is obligatory for doctors and hospitals to provide a copy of the case record or medical record to the patient or his legal representative. In practice, this may not be happening everywhere due to lack of adequate infrastructure for maintenance of records and laxity in providing these to patients. Consumer unawareness regarding their right to seek medical records is also largely responsible for this.

The pandemic crisis has exposed the huge mismanagement and corruption in health sector and the fact that many things go wrong, including equipment and medicine in the line of treatment. This has highlighted the need for a stringent legal framework and dedicated administration to ensure a proper healthcare system.

Conclusion

Under the CPA, 1986, 'service' had been defined to include banking, financing, insurance, transport, processing supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information. However, any service provided free of charge and contract of personal service including that of domestic workers directly under the control of the consumer were excluded from the purview of services.

Speculations about whether medical services were included under the CPA or not persisted till the verdict of



IMAGE: PIXABAY

Consumer protection acts must guarantee redressal mechanism to patients too.

the Supreme Court in the VP Shanta (1996) cases wherein the apex court held it came within the ambit of CPA. Post this ruling and interpretation, there was a flurry of litigations against medical professionals in consumer tribunals.

The new CPA defines 'service' to include all the elements that were included in the CPA, 1986, specifically excluding any service rendered free and contracts of personal service. However, ambiguity regarding healthcare is back. Sec. 1(4) of the new Act stipulates that unless expressly provided by the central government by notification, the Act shall apply to all goods and services. Experts interpret this, in combined reading of these provisions, to mean that unless excluded expressly by the central government, the present law would apply to medical professionals and health services as well.

Acts of negligence or gross negligence are rampant in the medical profession and it is only practical to provide consumers protection against such acts by making the healthcare services liable for any such conduct. Some experts suggest granting the Medical Council of India wider powers in this matter. It is felt that the Council would be better equipped to deal with medical cases of negligence and malpractices and be able to deliver speedy and proportionate justice to both the parties. A bench of the tribunal comprising both judicial and technical members should be instituted.

It is felt that consumer forums that are not equipped to deal with such highly specialized matters are

unnecessarily burdened, and this delays grant of justice. A case in point is the fact that consumer forums are bogged down by pending cases running into lakhs involving technical issues. Further, with the introduction of mediation as an alternative dispute resolution mechanism under the new Act, in the absence of proper rules and regulations which have not been notified yet, it will only exacerbate the ambiguity of technical matters.

In technical cases involving complexities the consumer is helpless and many times unable to take up the matter to the courts for want of guidance from competent authorities. Any ambiguities in the law only add to the confusion and apprehension of consumers who may abandon the idea of seeking redressal for the fear of all the technicalities involved. Right to healthcare is a fundamental human right and it is incumbent upon the government to ensure that citizens are not denied their right.

Whether it be discrepancies in provision of healthcare services or in consultation fees and costs, diagnostic tests or in fact any kind of deficiency in health services, the government must address it and provide legal protection for aggrieved consumers. The first step is to remove any ambiguity as to the treatment of healthcare under the new Act. ▀

Source: Secondary research & media reports

CONSUMER PROTECTION

A HISTORICAL PERSPECTIVE



IMAGE: PIXABAY

The rising consciousness of consumers regarding their need for protection and rights led to governments across the world instituting laws for their protection.

IT WAS IN 1856 that a select committee recommended a cheap and easy remedy for consumers who had ended up buying adulterated or falsely described food. The suggestion of the committee found a place in the Merchandise Marks Act, 1887. The Act provided that any seller who applied a trade description to a product must warrant the description was true of the product it described and that a trade description that was false was a breach of both criminal and civil law.

In England, the organized consumer movement began after the Second World War. With the Labour Party giving the slogan of “battle for the consumers” in Parliament. A number of legislations were introduced in Britain for the protection of the consumers in the 60s and in 1978, the Consumer Safety Act, 1978 was enacted.

In the United States, the consumer movement developed in early 19th century. The impetus came from the case where a consumer sued the Buick Motor Company. The judgment by the New York Court of Appeal that ruled in the favor of the consumer observed that a car manufacturer was liable to compensate a consumer for injury caused by the collapse of car wheels due to defect. The manufacturer had been negligent, and the defect could have been discovered by reasonable inspection, the court held. Later, in 1972, the consumer Product Safety Act was enacted.

The modern consumer movement traces its genesis to the Progressive Era when unsafe products and environmental hazards became a rallying point for citizens. They resorted to lobbying, voting, and media exposes to pressure the government for protection. The consumers Union (1936), publisher of consumer reports, tested products for safety, economy, and reliability with the aim to provide consumers an objective basis for choice.

The socially engaged consumerism was not new though and had a long historical tradition. The Revolutionary Era boycott of English tea and textiles and abolitionists' refusal to buy goods made of slave-produced cotton, were all a part of the consumer movement with socialist roots.

Consumer activism got a revival in late 1960s and grew through the 1970s Thereafter, though there was a conservative backlash against government regulation, it survived in a diminished form in the 1990s.

Thus, consumer movement was a byproduct of the 1960s social activism when citizen activists insisted on citizens' rights to safe and reasonably priced goods and services and to the full disclosure of product information.

March 15 came to be observed as the World Consumer Rights Day to commemorate the 1962 historic moment when US President John F. Kennedy called upon the United States Congress to accord its approval to the Consumer Bill of Rights. The rights that consumers in the US got through this were: (i) right to choice; (ii) right to information; (iii) right to safety; and (iv) right to be heard. Later, President Gerald R. Ford added one more right i.e. right to consumer education. Later additions to



IMAGE: FREEIMAGES

Consumer safety is an overriding concern.

these rights brought in right to healthy environment and right to basic needs (food, clothing and shelter).

The United Nations general guidelines for consumer protection constitute a comprehensive policy framework and are meant to provide governments with an outline to promote consumer protection. It covers the following seven areas:

1. Physical safety
2. Protection and promotion of the consumer economic interest
3. Standards for the safety and quality of consumer goods and services
4. Distribution facilities for consumer goods and services
5. Measures enabling consumers to obtain redress
6. Measures relating to specific areas (food, water and pharmaceuticals)
7. Consumer education and information program

The UN guidelines are not binding on any country but have been internationally recognized as a set of basic objectives that help governments to structure and strengthen their consumer protection policies and legislations.

Indian perspective

It was in this background that the Indian Parliament enacted the Consumer Protection Act, 1986 with the declared objective of the statute “to provide for better

protection of the interests of consumers.” The Act sought to provide Indian consumers with a speedy and inexpensive remedy.

However, the enactment of the ACT was preceded by consumer movement as a 'social force' that had at its center the basic need for protecting and promoting the interests of consumers against unethical and unfair trade practices. In the absence of laws to protect the consumers, rampant food shortages, hoarding, black marketing, adulteration of food and edible oil were the order of the day. These were the impetus for the birth of the consumer movement in an organized manner in the 1960s. For the next decade, that is till the 1970s, consumer movement was confined to producing articles and holding exhibitions. Consumer groups began to be formed to look into the malpractices in ration shops and overcrowding in the road transport. The consumer groups continued to multiply and proliferate across India.

The consumer movement, as is obvious, was the result of largescale dissatisfaction of the consumers over the rampant malpractices by traders who were getting away with impunity. The absence of a legal system for aggrieved consumers to seek redress and protect from exploitation in the marketplace was making the sellers bolder. The only recourse that consumers had over the products that they bought was to either switch brands when a product was found to be defective, adulterated or substandard, or switch stores in case the store was indulging in malpractices. There was absolutely no scope for challenging the manufacturer or the seller over goods that failed to deliver on promise.

It was assumed that ensuring the quality of what was bought lay with the consumer and it was their duty and responsibility to carefully scrutinize the product while buying a commodity or service.

After years of sustained efforts consumer organizations in India, and around the world, managed to raise awareness amongst the people regarding their rights as consumers. All these efforts of the consumer movement led to bear upon business firms as well as government to bring corrective steps into business conduct to ensure consumers got a fair deal and that actions of the businesses were largely in the interests of consumers.

In 1986, the Indian government took a giant step enacting the Consumer Protection Act 1986.

But to think that consumer protection is just the function of a single law would be a fallacy. Consumer protection works through a comprehensive network of laws including Contract, Tort, Railways, Telegraphs, Telephones, Post, Air Travel, Insurance, Electricity, Water, Housing, Medicine, Banking, Finance, Engineering, Motor Vehicles, Hotel Industry, Entertainment, Cooperative Societies, Tourism Agencies, Sales Tax, Central Excise, Limitation, Transport, among others.

In a paper titled 'Consumer Protection in India – Some Reflections', academics S.S. Singh and Sapna Chadah point out that consumer issues can emerge from any field and along with laws regulating different segments of the economy and society, unfair trade practice and restrictive trade practices must also be considered. They note the various Acts that are operational in the country to protect the consumers against different forms of exploitation.

Despite the existence of a plethora of laws aimed at protecting the consumers, except for the Monopolies and Restrictive Trade Practices (MRTP) Act (now repealed) all the other Acts were mainly punitive and preventive in nature. These did not allow the consumer to seek remedy or redressal against a manufacturer or a service provider. The lack of an effective mechanism or



IMAGE: PIXABAY

India's Consumer Protection Act is one of the most benevolent pieces of legislation.



IMAGE: PEXELS

Consumer protection comes of age with Consumer Protection Act, 2019.

institutional arrangement for the speedy redressal of consumer grievances was sorely felt. There was also no popular or consolidated movement for consumer protection and the Indian consumer was in effect isolated and helpless.

Gradually the pressure from various consumer protection groups and the consumer themselves mounted and led to the enactment of the Consumer Protection Act in 1986.

Several new legislations have been introduced from time to time but the Consumer Protection Act, 1986 remained the most benevolent social legislations with the express purpose of protecting the consumer from exploitation.

Thus, in India the consumer protection movement that was initiated as a social movement for safeguarding of consumer interests received a legal authority by the institution of the Consumer Protection Act in 1986. The six consumer rights that were recognized by the Act were

- Right to Safety-to protect against hazardous goods
- Right to be Informed-about price, quality, purity
- Right to choose-access to a variety of goods and services at competitive prices.
- Right to be Heard-consumers interest and welfare must be taken care of
- Right to seek Redress-protection against unfair trade practices and settling genuine grievances.

- Right to Consumer Education. -Knowledge about goods and issues related to consumers.

The Consumer Protection Act provided a single comprehensive law for the protection of consumers and this was to be achieved by the creation of special courts to solve consumer disputes speedily and in an inexpensive manner.

India takes another giant step

With the notification of the Consumer Protection Act 2019, India recently took another huge step in the consumer protection domain. The definition of consumer has been further broadened under the new Act as it recognizes those consumers who may be engaged in offline as well as online multi-level and telemarketing transactions in the definition.

Conclusion

India has reached a critical juncture in its consumer protection movement and the recognition and widening of the purview of the Act shows that the government is alive to the evolving needs of consumers and make commensurate changes in laws to keep them protected. ▶

Source: Secondary research & media reports

RIGHTS OF CONSUMERS

Consumers in India enjoy some basic rights enshrined in the Consumer Protection Act that they must be aware of.



IMAGE: PIXABAY

Consumers must know their basic rights.

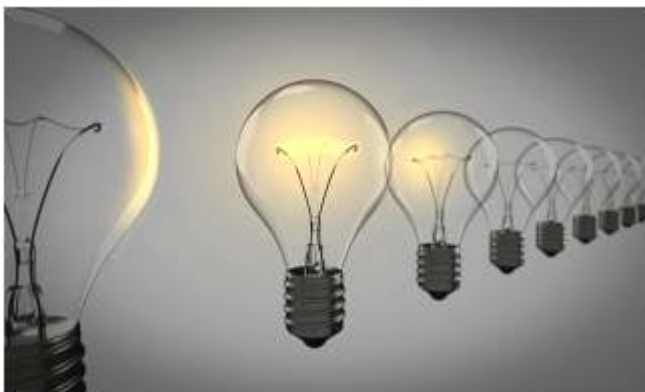
UNDERSTANDING THE MEANING of 'consumer' is fundamental to our empowerment as consumers. So, who is a consumer?

A consumer is someone who purchases any goods for a sum that has either been paid or partly paid or promised to be paid or partly promised to be paid. The consumer is not only the person who has bought the goods but also someone who is making use of the bought goods with the consent of the person who bought it. A consumer is not someone who has obtained the goods for resale or for any commercial purpose. The same definition can be extended to the consumption of services at a payment.

Hence, a consumer refers to any person or institution who purchases goods or hires services for consumption. Since the consumer is paying for goods or services, it is but natural to expect that these products or services justify the money spent on acquiring them. But alas! It is not so straightforward as the consumer is exposed to many difficulties in the market due to the practices of the marketers – prices can be arbitrarily high, goods can be of poor quality and services can be deficient, there can be adulteration, or falsification among others acts.

To regulate these malpractices and ensure that the consumer is not cheated, the government is required to step in by granting them some rights. This the governments do by enacting consumer protection acts. India also provides certain rights to its consumers. Indian consumers enjoy six basic rights that every individual must be aware of. They are:

1. Right to Choose



Consumers have the right to choose the product or service they want.

No seller in India can force a consumer to buy a good or a service against their wishes. The Consumer Protection Act, 1986 provided every consumer with the right to choose the product or services of their liking. No seller can force the consumer to buy product of any brand. It is totally the consumer's decision as to which product they purchase or not. It is important to understand this right especially in today's hypermarket environment where multi-brand chains have begun manufacturing products

under their own brand and push consumers to buy them by displaying these products prominently on shelves or through salespersons, who are often brand representatives, stationed to guide consumers' purchase decisions. An interesting fact is also that the MRPs that the sellers claim to be fixed can be bargained on as these are fixed by the producer and not the government.

2. Right to Safety

It is the right of the consumer to require safety against products which are hazardous to the life or property of the consumer. Safety standards for such products are



No product or service must jeopardize consumers' right to safety.

fixed by the government and it is mandatory for manufacturers to comply with these required safety standards. Standards certifications are only provided to manufactures if the product fulfills all the stipulated safety requirements. Only certified products can be sold in the market. Right to safety is applicable generally to the food processing, pharmaceutical and electrical products industries as these products can be hazardous to human life in case there is a manufacturing fault. To exercise this right a lot depends on the consumer. They need to be educated and aware of the certifications and standards and check for the same when making a purchase decision.

3. Right to Seek Redressal



Consumers can seek damages if wronged.

This is the most important right that empowers the consumers by providing them the right to seek redressal against unfair trade practices or restricted trade practices and also compensation when they have suffered due to the unscrupulous and deceptive practices of businesses. The consumer can seek compensation in the form money for damages caused or the defective product may be replaced by another of the same brand, quality or price as the case may be. The compensation must satisfy the customer. The aggrieved can also approach the consumer competent consumer protection authorities seeking redressal of their grievances.

4. Right to Information



IMAGE: PIXABAY

Consumers must be provided requisite information to help in purchase decision.

Every consumer has the right to accurate and unambiguous information of product or service. The seller/manufacturer must ensure that the features of the product or services such as quality, quantity, purity, standard and prices are clearly displayed and that there is no exaggeration or falsification in claims. This right seeks to ensure that the consumer is provided all relevant information regarding a product or service so that they are protected from unfair trade practices. Any seller who refuses to provide all such information to the customer is breaking the law.

5. Right to be Heard



IMAGE: PIXABAY

Speak up and be heard.

The Act provides consumers the right to be heard or right. This means that every consumer has the right to voice their complaints and raise queries against any unfair trade practice that they encounter in the appropriate forum. The Act provides consumers a window to air their issues and seek justice when wronged. Not only this, companies are mandated to maintain a complaint resolution cell where customers can complain and expect quick redress of their grievances. From banks to airlines, manufacturers to sellers, every seller or service provider, especially in today's digital commerce environment, must provide the consumer a platform to register complaints and seek redressal.

6. Right to Consumer Education



IMAGE: PIXABAY

There cannot be empowerment without consumer education.

Unless the consumers are adequately educated about their rights and the laws that protect them, we cannot expect consumer empowerment. This right provides consumers the right to have education and awareness related to consumer law. It is hence incumbent upon the authorities to undertake mass awareness and education programs on consumer rights and legislations. It is difficult for consumers, especially in the rural and semi urban areas, to understand complicated laws. Hence, it is imperative to tailor awareness campaigns that are simple to understand and also appeal to the consumers. It is imperative that customers understand the law and under this right, they be educated about consumer rights.

Conclusion

Consumer rights are vital to protect the consumers from unfair trade practices. In a country like India where the education and awareness level are low, it is easy for unscrupulous businesses to cheat consumers. It is hence important that consumers are educated on their rights enshrined in the new Consumer protection Act, 2019. ▀

Source: Secondary research & media reports



**Bharat Ratna Mahamana
Pandit Madan Mohan Malaviya**



MAHAMANA DECLARATIONS & ACTION PLAN

ON THE ROLE OF AYUSH AND COVID-19 PANDEMIC 2020

www.patientsafetyaccess.org

9 Key Concepts

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2. Value of AYUSH
3. AMEND The Standard Setting Exercise for AYUSH MEDICINES
4. The Increasing Demand for AYUSH Practitioners
5. Assess the Value of Our Bio-Resources
6. Strong Regulatory Body
7. Institutionalize AYUSH
8. Make AYUSH Popular:
Four Perspectives: i. Preventive interventions; ii. Novel scientific studies; iii. Immunity; iv. Up-scaling and marketing
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Consumer Online Foundation

New Rules For Consumer Protection And E-commerce Players: Early Thoughts On Coverage

By Saurya Bhattacharya, Partner – Cyril Amarchand Mangaldas



THE LAST WEEK of July 2020 has seen a flurry of activities in the space of consumer protection legislation in India. Arguably, this is a tall order for a country like India with its vast and diverse consumer base. That the government of India took this step amid a raging pandemic when logistics and lockdowns restrict consumer protection, is commendable

The most notable change in the legislative space is certainly the coming into effect of significant provisions under the Consumer Protection Act, 2019 (“**Act**”), which replaces the Consumer Protection Act, 1986 (“**Old Act**”). This is relevant because the habits of the consumer as well as business practices have seen significant changes in the last 34 years. The National Consumer Disputes Redressal Commission has also notified the following regulations soon after the Act came into force:

- Consumer Protection (Mediation) Regulations, 2020
- Consumer Protection (Consumer Commission Procedure) Regulations, 2020; and
- Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020

While these are all relevant and it is hoped that they serve in the right direction, the Consumer Protection (E-Commerce) Rules, 2020, have garnered maximum attention since its notification on July 23, 2020 (“**Rules**”).

Hereunder, we discuss why the Rules are relevant and what kind of entities and businesses it aims to cover within its framework.

Why are the Rules Necessary?

While the Old Act and the regime thereunder was well-intentioned, for obvious reasons it could not have been best equipped to cater to the e-commerce space that dominates large parts of urban and semi-urban consumer consumption choices. In Covid-19 affected times, locked-at-home consumers have been overtly reliant on e-commerce for their purchases, which has catapulted the platform to a status of 'necessity'. Therefore, the Rules governing the industry attain an even greater importance to maintain checks and balances between e-commerce entities, sellers and consumers.

Coverage of Business Entities and Models

The Rules attempt to take into account the various stakeholders and business models that are prevalent in the e-commerce space and, accordingly have introduced key concepts. Some of them are highlighted below:

- **E-commerce entity:** This would be any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. However, it excludes a seller who offers his goods or services for sale on a marketplace e-commerce entity (which is one of two categories of e-commerce entities recognized under the Rules).



In this regard, the following may be noted:

- “e-commerce” is not defined in the Rules but under the Act and covers the buying or selling of goods or services over digital or electronic network. Given the distinction in business models of e-commerce that are not clearly recognized herein, the Rules needed to identify the two major categories of e-commerce entities. The same shall be discussed subsequently.
- The definition of e-commerce entity using the wide language of “digital or electronic facility or platform” covers not just transactions on the world wide web but also the increasingly popular app-based space as well.
- The construct of e-commerce entity itself recognizes that electronic marketplace is not the only form of e-commerce, although they may be more visible to the eyes of the consumer due to advertising and media coverage. This also creates relevance for specific categories of e-commerce entities under the Rules.
- Before going into the categories of e-commerce entities that the Rules recognize, it is important to understand who is considered a seller for these Rules. For this, the Rules also refer to the definition of “product seller” in the Act. It must be admitted that the definition of “product seller” may create some confusion, as part of this detailed definition begins by stating that it is in relation to a “product” but subsequently goes on to include a service provider. Thereafter, it effectively excludes the provision of professional services from its scope, where sale or use of a product is incidental to the services. The definition of “product” under the Act itself does not include services. In this light, the usage



of definition of “seller” in the definition of “e-commerce entity” under the Rules could imply that the exclusion would be only for a person who offers his products and services in relation to such products on a marketplace e-commerce entity. However, no exclusion might be there for a person who offers services per se on a marketplace e-commerce entity. An example of this could be transportation services by an entity who owns the fleet and, therefore, may not fall within the category of “seller” or “product seller”.

- The two categories of e-commerce entity recognized under the Rules are:
 - Inventory e-commerce entity and
 - Marketplace e-commerce entity

This categorization is similar to how e-commerce entities have been viewed from a foreign investment regulation perspective as well.

- **Inventory e-commerce entity:** Ownership of goods or services and direct sale is key to this model. Accordingly, it covers e-commerce entities who own the inventory of goods or services and sell them directly to the consumer. It includes single brand retailers as well as multi-channel single brand retailers. In this regard, the following observations can be made:
 - While the Act contains a definition of “manufacturer,” the Rules themselves do not and limits itself to the concept of “seller”, as discussed above.
 - Further, single brand retailer and multi-channel single brand retailers have been added in an inclusive but not exhaustive capacity.

- In light of the above, it remains to be seen whether inventory e-commerce entity would include manufacturers/consumer companies who also own and sell their single or multi-brand products through e-commerce (with or without multi-channel routes).
- It would also have to be seen if service seller who owns the underlying products (such as the example of the transportation service provider who owns the fleet) would fall within the inventory e-commerce entity category.
- **Marketplace e-commerce entity:** This covers an e-commerce entity that provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers. In this regard, the following may be noted:
 - In the marketplace model, the e-commerce entity does not have any ownership of the goods or services.
 - There is no requirement of direct sale to the consumer (as the language refers to buyer and not consumer – unlike the definition of “inventory e-commerce entity”)
 - It must be noted that “buyer” is not defined in the Rules nor in the Act, but it can be expected that the term shall include a “consumer”.
 - The language uses the term “transactions”, while an e-commerce entity is for electronic commerce. Accordingly, it may have to be assumed that it is intended to imply “e-commerce transactions”.
 - In this light, this model can cover those websites and platforms where different manufacturers and sellers offer their products or services.
 - Another interesting example in this case would be that of transportation or taxi aggregator services where the fleet is not owned by the aggregator. It would be an e-commerce entity that provides services but does not get excluded under the concept of “seller” as it pertains only to product sellers. The aggregator sells a service to the end consumer but does not own the underlying product. Hence it may fall within the purview of inventory e-commerce entity. On the other hand, it provides an information technology platform on a digital or electronic network between buyer (inclusive of end consumer) and seller of such services. Thus, it can be construed as a marketplace e-commerce entity.

Closing Remarks

The Rules are a step in the right direction. While there appears some lack of clarity on conceptual coverage in terms of business models (especially under the inventory e-commerce entity category, as demonstrated above), the intent of the Rules is stated clearly therein – to cover in scope all models of e-commerce, not just the marketplace or inventory models. Accordingly, some more harmonization in the future can be expected. ▀

An Empowering Act



Consumers welcome the new Consumer protection Act, 2019, feel it puts them at the center of the rulebook and empowers them as never before.

Finally, consumers have much to be happy about.

IMAGE: PIXABAY

Consumers can complain from anywhere

The Consumer Protection Act, 2019, by allowing a consumer to institute a complaint from the place he/she resides or from where he/she works for gain, has brought much-needed ease to consumers seeking redressal. The earlier Act had stipulated that complaints be initiated only in the place where the transaction took place. This was a huge deterrent for consumers in approaching consumer forums. From filing a case to pursuing it involves a lot of harassment of the consumers. The new Act by making provisions increasing pecuniary limits, providing statutory recognition to mediation processes, enabling filing of complaints from any jurisdiction and for hearing parties through videoconferencing has increased consumers' accessibility to judicial forums. These provisions will go a long way in providing enhanced protection to the consumers in the globalized marketplace, both offline and online.

– Prem Prakash, Noida

A law that has no compliance

Our government is scrapping many laws that have no application / making the legal system cumbersome or are overlapped. Has the government taken any note of the laws which are not followed even by court? In my humble

opinion, value of time of Parliament is highest in a democracy and development of a country depends upon the legal system in general and true implementation of the laws of the country in particular. Bad obedience of the law promotes corruption that causes hindrance in the development of the country. May I explain my viewpoint with the example of Consumer Act 1986. This Act mandated to settle a complaint within 90 days but there is not a single complaint that has been resolved within stipulated period of 90 days and the complaints are piling up. There are complaints, which are waiting disposal from eight-ten years. NCH is of no use to as they advise to file complaint in consumer court – NCH is a white elephant.

Three simple suggestions:

- Government (Department of Public Grievances) must say 'Any Issue reported by e-mail if not resolved within 15 days will be seriously viewed'
- Any officer, public or private who says 'Go to Court' should be declared incompetent and removed from his duties.
- Judicial Officers issuing non-speaking orders must be removed from his /her position

Above-mentioned three points will reduce public grievances and also minimize court cases. Hon'ble Law Minister may please consider and act on my submissions in public interest.

– M R Gupta

Former Asst Controller of Patents & Designs,
Govt. of India
True Patents - (www.truepatents.org)
For Justice and Development

Online shoppers get reprieve

The e-commerce rules that are a part of the Consumer Protection Act, 2019, apply to all goods sold through a digital platform and make online retailers more accountable and transparent. Thus, effectively, the new Act puts the growing tribe of online shoppers at the center of the new law. This was urgently needed given the growing preference for online shopping by Indian consumers that received an impetus due to pandemic crisis.

It helps that the new Central Consumer Protection Authority (CCPA) has also been given sweeping powers to book those violating consumer rights. It is expected that the huge surge in online shopping in the Covid world will carry on to the post-Covid world as consumers are discovering the ease of shopping online and also the wide choices in products along with competitive pricing. Under the previous law, consumers had to file complaints in the district where the e-commerce portal had an office.

Consumer grievance must be settled within the stipulated period of time else they will remain prisoners of unscrupulous traders.

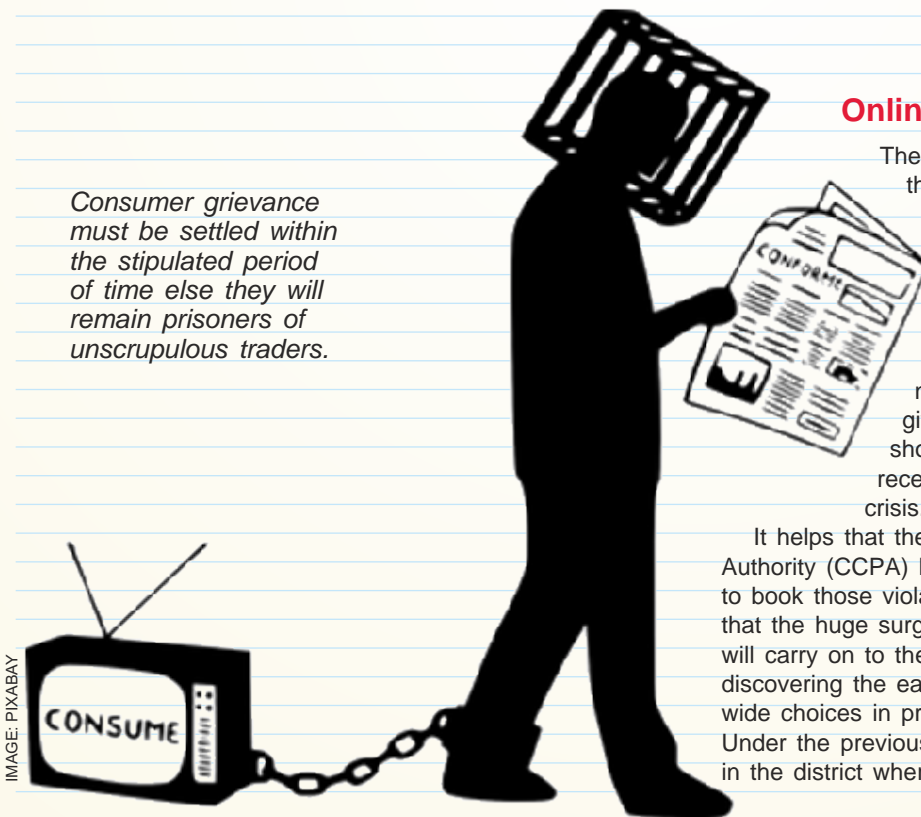


IMAGE: PIXABAY



IMAGE: PIXABAY

The e-commerce rules by putting online shoppers at the center have empowered them.

This has changed under the new law and consumers can file cases from their place of residence or work. This was much needed as in the digital marketplace a consumer from any corner of the country can shop on a platform. The shopping websites will no longer be able to circumvent the law after selling defective products. A buyer in Delhi who got a defective product from a seller in Kolkata will now not need to file a case in the seller's

location. Now the buyer can file a case in his city of residence and the seller will have to attend hearings in the buyer's city. E-commerce sites will also have to disclose details on return policy, grievance redressal mechanism and product's country of origin. All these measures will make the consumer empowered.

– **Binita Singh, Faridabad**

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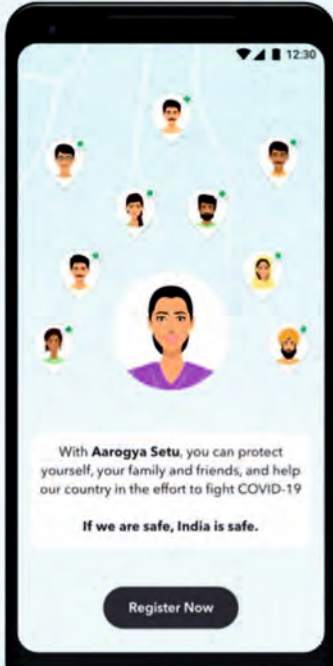
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