
RECENT REFORMS IN CONSUMER PROTECTION LEGISLATION IN INDIA

Rajdeep Bhattacharjee, Symbiosis Law School, Pune

ABSTRACT

Consumer protection has always been of paramount importance not only from the perspective of the consumers but also for the businessmen who are either providing any sort of goods and/or services to the people. A robust regime of consumer protection laws is quintessential for harbouring a healthy and conducive commercial environment in the nation.

With changing times and technology coming about, there was a requirement for tweaking and changing if not overhauling, the entire consumer protection regime. Since the time the first consumer protection laws were framed in India, the dynamics have changed immensely owing to development and overall changes brought about in the society and also due to the novel ways of communication and interaction that human beings have developed. Therefore, a lot of definitions that were present in the previously enacted laws, for an example, were not at all exhaustive and to a certain extent thwarted the growth of development in the consumer protection landscape. To amend this, new laws were brought in and the new problems that were identified in the consumer protection regime, were addressed in a more or less exhaustive manner.

This paper delves deeper into those facets of development that were identified and hence brought about. It analyses the same and puts forward rational conclusions as to whether the changes which were brought about will impact the consumers and along with them the goods and service providers in a positive or negative manner.

In doing the same, the author has taken a three speared approach wherein three things are used for analysis. Firstly, the lacunae were identified in the past consumer protection laws which couldn't adequately serve the contemporary requirements of both the consumers and the goods and service providers. Secondly, case laws have been discussed extensively to understand the stance of the apex court of the nation and hence bolster the fact the lacunae were present in the old consumer protection regime. Finally, the changes that were brought about in the legal regime are discussed and a rational nexus is drawn to establish that the new legal regime has bridged the gaps that were present.

Introduction

At the very onset of this dis-course it is quintessential for us to delve deeper into the history of consumer protection in India and understand the rationale behind the reason due to which this legislation was enacted in the first place.

With the passage of the Consumer Protection Act of 1986 (the "CPA"), which was created particularly to safeguard consumer interests, the Indian legal system underwent a transformation. The CPA was approved with stated goals. Its goal is to offer "less formal, less paper-intensive, less time-consuming, and less [expensive] justice." The CPA has gained widespread acceptance in India as "poor man's law," guaranteeing simple access to justice. The CPA just adds a new dimension to rights that have been acknowledged and safeguarded since antiquity, nevertheless. It is true that "the current concern for consumer rights is not new and that consumer's rights like the right to enjoy safe, unadulterated, and defect-free items at reasonable costs has been acknowledged since antiquity¹.

The CPA has been in operation for 20 years, which demonstrates both its widespread acceptability and the legal preference of affected consumers to exercise their CPA rights. Due to its affordability and user-friendliness, the CPA commands the consumer's support. In fact, the CPA raises legal awareness among the populace while also making them less inclined to contact regular courts, particularly when it comes to consumer issues. Regardless of the substance of their case, it has altered the public's legal mentality by forcing them to consider their CPA remedies first. In summary, the "teeming millions" of low-income litigants now have faith in the CPA. The manner that consumer forums are overrun with cases and the method that these cases are resolved give the image of "judicial populism" in India's consumer justice system. The CPA excels because of its adaptable legal system, expansive jurisdiction, and affordable justice. The CPA has a combination of tort and contract law elements. It is "a shorthand term to represent all the many distinct components of general law,"² to put it simply. In essence, the CPA relaxes the rigid old rule of standing and gives consumers more freedom to act in accordance with the CPA³. The CPA gives consumer advocacy organisations, the federal government, or any state government the authority to file complaints⁴. This

¹ Gurjeet Singh "The problem of Consumer Protection in India : A Historical Perspective" Consumer Protection Reporter 704 at 705, n.6 (1994 III)

² Bill Thomas, *The Legal Framework of Consumer Protection*, in *Marketing and the Consumer Movement* 49 (Jeremy Mitchell ed., 1978).

³ The Consumer Protection Act, No. 68 of 1986; India Code (1986) ch. 2 § 1(b)(iv).

⁴ Id. at ch. 2 § 1(b)(iii)

liberalisation demonstrates the attention paid to standing up for and advancing the interests of powerless, uncaring, and ignorant customers. The inclusion of both products and services within the CPA's purview is what makes it innovative. Both product and service defects are grounds for legal action by the customer. All services, whether rendered by the government or by for-profit businesses, are subject to review under the CPA in the event of any deficiencies⁵. The CPA also simplified complex access to justice procedures and loosened strict procedural constraints. The customer merely needs to pay a little charge and doesn't need to notify the other party in order to proceed under the CPA. Simple legal action can be started with a letter written to the consumer forum. The consumer's choice to hire a lawyer is another significant procedural flexibility. The customer is free to represent himself if he so chooses. Consumers are encouraged to take use of the CPA's advantages by the straightforward actions. By ushering in the era of consumers and creating a new legal culture among the populace that encourages recourse under the CPA regardless of the nature of their complaint, the CPA started a legal revolution. The National Commission, the State Commission, the District Fora, and the Consumer Disputes Redressal Agencies are collaborating in a way that is modernising the current Indian legal system and posing a threat to the established system of dispensing justice. With the CPA's provision of simple access to the courts, customers can now easily take legal action against dishonest sellers or service providers. The Indian government is actively supporting successful consumer movements and defending consumers' rights. A national action plan was created as a result of the Planning Commission of India designating "Consumer Awareness, Redressal, and Enforcement of the Consumer Protection Act of 1986" as a priority in 2003⁶. The consumer forums established by the CPA have proven to be successful, resolving thousands of claims with few procedures and paving the path for India to develop a solid consumer jurisprudence. In addition to a significant backlog of cases, the traditional Indian legal system is currently dealing with a lawsuit explosion in the domain of consumer protection.. Due to the overwhelming backlog of consumer cases before consumer fora, the Indian legal systems are being forced to consider "alternatives" for the quick resolution of consumer matters. India, where the majority of consumers worldwide reside, is dedicated to advancing consumer welfare through innovative legislative developments.

⁵ Id. at ch. 2 § 1(c).

⁶ An overview of the changes to be introduced by the Consumer Protection Act, 2019 - Dodd-Frank, consumer protection act - india An Overview Of The Changes To Be Introduced By The Consumer Protection Act, 2019 - Dodd-Frank, Consumer Protection Act - India, <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/969026/an-overview-of-the-changes-to-be-introduced-by-the-consumer-protection-act-2019> (last visited Jul 10, 2022)

Due to changing times and with it the changing needs and problems of the consumers there was a dire requirement that came to fore of updating/reforming the consumer regulations due to which in the year 2019, Consumer Protection Act, 2019 came up.

To replace the Consumer Protection Act of 1986, the Consumer Protection Act of 2019 was proposed. The new Act includes a number of provisions that take into account the difficulties faced by contemporary, technologically dependent customers. The Act also includes a number of clauses aimed at advancing and defending consumer rights⁷.

Reforms brought in by the Consumer Protection Act, 2019

Definitions

According to Section 2(7) of the 2019 Act⁸, a consumer is any person who purchases things or uses services in exchange for payment. This definition also covers users, with the exception of those who have purchased goods or used services in order to resell them or use them for business purposes. The definition's explanation makes it clear that the phrases "buys any things" and "hires or avails of any services" include any electronic transactions made online, as well as direct selling, teleshopping, and multi-level marketing. This act's unique feature—online transactions—was added with the expanding e-commerce industry and technological advancements in mind⁹.

Prior to this change, the definition of "consumer" in the Consumer Protection Act of 1986 (the "1986 Act") did not specifically refer to e-commerce transactions; instead, it was used to refer to a person who purchased goods or used a service. The newly established concept under CPA 2019 clearly refers to online transactions made via electronic means, or "e-commerce transactions." E-commerce is defined as "purchasing or selling of goods or services over a digital or electronic network," including digital products, in Section 2(16) of the CPA, 2019.

The Government of India just announced the Consumer Protection (E-Commerce) Rules, 2020, which is pertinent ("E-Commerce Rules, 2020"). The E-Commerce Rules, 2020 are applicable

⁷ CONSUMER PROTECTION ACT, 2019 IPLEADERS, [https://blog.ipleaders.in/consumer-protection-act-2019/2/#:~:text=The%20changes%20that%20were%20incorporated,not%20exceed%2050%20lakh%20rupees\(last visited Jul 10, 2022\)](https://blog.ipleaders.in/consumer-protection-act-2019/2/#:~:text=The%20changes%20that%20were%20incorporated,not%20exceed%2050%20lakh%20rupees(last%20visited%20Jul%2010,%202022))

⁸ Section 2(7), Consumer Protection Act, 2019.

⁹ Consumer protection act, 2019: Key Takeaways - Dodd-Frank, consumer protection act - india Consumer Protection Act, 2019: Key Takeaways - Dodd-Frank, Consumer Protection Act - India, <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/1020458/consumer-protection-act-2019-key-takeaways?login=true&debug-domain=.mondaq.com> (last visited Jul 10, 2022)

to all sorts of unfair trade practises, inventory-based e-commerce entities¹⁰, market-place e-commerce entities¹¹, and e-retailers registered in India or overseas but supplying goods and services in India. The fundamental goal of executing the E-Commerce Rules, 2020 was to subject e-commerce entities to legal requirements and so secure the protection of customers' interests and rights¹².

A comprehensive description of "consumer rights" is also provided by the Act of 2019 under Section 2(9) of the Act¹³, something that was conspicuously lacking from the previous Act but was described in a cavalcade of court rulings by the Hon. Supreme Court of India¹⁴. The said definition includes the right to be shielded from the marketing of goods, products, or services that are dangerous to life and property; the right to be informed about the quality, quantity, potency, purity, standard, and price of goods, products, or services, as applicable; the right to be guaranteed access to a variety of goods, products, or services at competitive prices; the right to be heard and the assurance that consumers' interests will be taken into consideration; and the right to be informed about the standard, price, and quality¹⁵.

¹⁰ Inventory e-commerce entity' is an entity which holds goods in stock or services and sells it directly to the consumers and shall include single brand retailers and multi-channel single brand retailers. See S. 2(f) of E-commerce Rules, 2020.

¹¹ Marketplace e-commerce entity' is an entity which acts as a mere facilitator. The seller displays its products on the online platform and the buyer interested in purchasing the product places the order through the online platform. On confirmation of the order, the product gets delivered where the buyer resides. See S. 2(g) of E-commerce Rules, 2020.

¹² Consumer protection act 2019: Promising transparency and choices to consumers - dodd-frank, consumer protection act - india Consumer Protection Act 2019: Promising Transparency And Choices To Consumers - Dodd-Frank, Consumer Protection Act - India, <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/993392/consumer-protection-act-2019-promising-transparency-and-choices-to-consumers> (last visited Jul 10, 2022)

¹³ Section 2(9), Consumer Protection Act, 2019.

¹⁴ *Venugopala Reddiar v. Krishnaswami Reddiar, alias Raja Chidambara Reddiar* [AIR 1943 FC 24];

- *Kiran Singh v. Chaman Paswan* [AIR 1954 SC 340];
- *Garikapati Veeraya v. N Subbiah Choudhry* [1957 SCR 488];
- *Mohd. Idris v. Sat Narain* [AIR 1966 SC 1499];
- *New India Assurance Company Limited v. Smt. Shanti Mishra* [(1975) 2 SCC 840];
- *Maria Cristina De Souza v. Amria Zurana Pereira Pinto* [(1979) 1 SCC 92];
- *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602];
- *Sudhir G Angur v. M Sanjeev* [(2006) 1 SCC 141];
- *Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass* [AIR 1952 Bom 365];
- *Ramesh Kumar Soni v. State of Maharashtra* [(2013) 14 SCC 696];
- *Commissioner of Income Tax, Orissa v. Dhadi Sahu* [1994 Suppl. (1) SCC 257];
- *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.* [(2001) 8 SCC 39];
- *Himachal Pradesh State Electricity Regulatory Commission v Himachal Pradesh State Electricity Board* [(2014) 5 SCC 219];
- *Videocon International Limited v. Securities and Exchange Board of India* [(2015) 4 SCC 33];
- *Securities and Exchange Board of India v. Classic Credit Limited* [(2018) 13 SCC 1]

¹⁵ Making consumer king again - A study of the consumer protection act, 2019 - part I Making Consumer King Again - A Study Of The Consumer Protection Act, 2019 - Part I - Dodd-Frank, Consumer Protection Act -

By including within its ambit that any act of negligence or omission or commission by a person which results in loss or injury to the consumer, as well as the purposeful withholding of pertinent information by a person to the consumer, the Act of 2019 has further envisaged a more inclusive definition of "deficiency."

The old Latin phrase *caveat venditor*, which means let the seller beware and implies that the person selling goods is responsible for disclosing information about the items to the seller, has been revived by the new extensive definition of "deficiency." As a rebuttal to the caveat emptor principle, it makes the seller accountable for the goods sold and dissuades them from doing so in the future¹⁶.

Unfair trading practises are described in Section 2(47) of the Consumer Protection Act, 2019¹⁷.

The term "unfair trade practise" has been expanded to encompass actions like:

1. Failure to properly issue a cash memo or bill for the services provided and the goods sold,
2. Refusal to withdraw, take back, or discontinue defective goods and services and refund the consideration paid therefor within the time period specified in the bill or within 30 days if there is no such provision in the bill, and disclosure of the consumer's personal information to any other party are all examples of dishonest business practises.

Online misleading advertisements were not included in the definition of unfair commercial practises in the abolished Act of 1986, as they were introduced in the 2019 Act.

Advertisements

The Consumer Protection Act, 2019, which was created with the interests of contemporary consumers in mind, includes new terms that were not included in the previous Act. According to Section 2(1)¹⁸, a "advertisement" is defined as any audio or visual publicity, representation, endorsement, or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet, or website, and includes any notice, circular, label, wrapper, invoice, or similar

India, <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/987258/making-consumer-king-again--a-study-of-the-consumer-protection-act-2019--part-i> (last visited Jul 10, 2022)

¹⁶ The 1986 act or the 2019 act? The Supreme Court clarifies applicability India Corporate Law, <https://corporate.cyrilamarchandblogs.com/2021/04/the-1986-act-or-the-2019-act-the-supreme-court-clarifies-applicability/> (last visited Jul 10, 2022)

¹⁷ Section 2(47), Consumer Protection Act, 2019.

¹⁸ Section 2(1), Consumer Protection Act, 2019

documents. This means that a consumer who has been harmed by a misleading advertisement can now approach the relevant authorities in search of relief.

The Consumer Protection Act of 2019 has sufficient legal frameworks to safeguard customers who are the targets of deceptive advertising. According to Section 2 (28)¹⁹ of the Act, a "misleading advertisement" is one that falsely represents a product or service, misleads customers about the product's quality, nature, substance, or quality, makes a false guarantee regarding the product, or purposefully withholds crucial facts. Aiming to protect consumers' interests as a group, the law aims to hold manufacturers, service providers, endorsers, and celebrities accountable for deceptive ads. However, if they can demonstrate that adequate investigation into the product's quality was done to verify the accuracy of the promises made for recommending the product, such endorsers or celebrities will not be held accountable.

The Delhi High Court while examining the concept of advertisement decided the case of,

*Horlicks Ltd. v. Zydus Wellness Products Ltd*²⁰.

The High Court passed an interim order restraining Zydus from telecasting its advertisement comparing Complian to Horlicks on the grounds that the same was misleading and disparaging. The Court relied on various judgments on misleading advertisements, disparagement and law governing publication of advertisements on television. Major decisions were:

*Dabur (India) Ltd. v. Colortek (Meghalaya) (P) Ltd*²¹.

The Delhi High Court culled out the principles governing disparagement in the advertisements and held:

On the basis of the law laid down by the Supreme Court, the guiding principles for us should be the following:

- (i) An advertisement is commercial speech and is protected by Article 19(1)(a) of the Constitution.
- (ii) An advertisement must not be false, misleading, unfair or deceptive.
- (iii) Of course, there would be some grey areas but these need not necessarily be taken as

¹⁹ Section 2(28), Consumer Protection Act, 2019

²⁰ *Horlicks Ltd. v. Zydus Wellness Products Ltd.*, 2020 SCC OnLine Del 873

²¹ *Dabur (India) Ltd. v. Colortek (Meghalaya) (P) Ltd.*, 2010 SCC OnLine Del 391

serious representations of fact but only as glorifying one's product.

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

*Pepsi Co. Inc. v. Hindustan Coca Cola Ltd*²².

In *Pepsi Co.* it was held that certain factors had to be kept in mind while deciding the question of disparagement. Those factors were:

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

These factors were amplified or restated in the following terms:

“(1) The intent of the advertisement – this can be understood from its story line and the message sought to be conveyed.

(2) The overall effect of the advertisement – does it promote the advertiser's product or does it disparage or denigrate a rival product?

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

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

These abovementioned are the legal precedents and position of misleading advertisements.

Product Liability

Claims against businesses that allegedly manufactured or marketed a faulty product fall under

²² *Pepsi Co. Inc. v. Hindustan Coca Cola Ltd.*, 2003 SCC OnLine Del 802

the category of product liability²³.

Prior to the 1986 Act, consumers could file lawsuits for faulty products, but there were no specific rules regarding product liability.

A thorough plan for product liability actions is provided by CPA 2019. According to Section 2 (34)²⁴ of the Consumer Product Safety Act, "product liability" is defined as "the obligation of a product manufacturer or product seller, of any product or service, to compensate for any harm to a consumer caused by such defective product manufactured or sold or by a deficiency in services relating thereto." As a result of this inclusion, any unhappy customer will be able to complain to the "product producer," "product service provider," or "product seller." Consumers now have more power under the CPA 2019 to begin a product liability lawsuit by submitting a complaint to the relevant authority. A comprehensive plan for product liability actions is set forth in CPA 2019 under Sections 83–87.

A complaint may file a product responsibility claim under Section 83 of the CPA 2019²⁵ for whatever injury the defective goods has caused him. A product seller, a product service provider, or a product manufacturer could all be the targets of such a lawsuit.

The requirements for holding a "product manufacturer" accountable in a product liability case are outlined in Section 84 of the Act²⁶. In the event of a manufacturing flaw, a variation from the manufacturing requirements, a failure to uphold the express warranty, or for inadequate or wrong usage instructions, a product liability lawsuit may be brought against the maker of the device. Relevantly, Section 84, subsection 2, provides for "strict product liability," which, among other things, mandates that a product manufacturer be held accountable in a product liability action even if he can demonstrate that he was not careless or deceptive when providing the express warranty for a product.

Similar to Section 84, Section 85²⁷ outlines the circumstances under which a product service provider may be held accountable for a product liability claim. The conditions include, among other things, a service that is defective, imperfect, deficient, or of low quality; an act of omission, commission, negligence, or knowing withholding of information that caused harm;

²³ The Liability Maze: The Impact Of Liability Law On Safety And Innovation (Peter W. Huber & Robert E. Litan Eds., 1991)

²⁴ Section 2(34), Consumer Protection Act, 2019.

²⁵ Section 83, Consumer Protection Act, 2019.

²⁶ Section 84, Consumer Protection Act, 2019

²⁷ Section 85, Consumer Protection Act, 2019

a failure to issue sufficient instructions or warnings to prevent any harm; or a service that does not adhere to an express warranty or the terms and conditions of the contract.

Similar to this, Section 86 of CPA 2019 specifies the requirements for a product seller's (who is not a product manufacturer) liability. A product seller is responsible for damages if, among other things, he breaches the express warranty made by the seller, fails to use reasonable care in assembling, inspecting, or maintaining the product, fails to pass along the manufacturer's instructions or warnings about potential risks or proper usage while selling the product, and these failures were the direct cause of the damages, or if he modifies the product.

It is interesting that, in product liability cases, proof of causation is also required. A plaintiff must show that a defendant manufacturer's product was the direct cause of her injuries.²⁸ In this regard, CPA 2019 has integrated the Section 87 exceptions to product liability action, outlining the circumstances under which a product seller or a manufacturer cannot be sued in a product liability action. Relevantly, a product seller is exempt from liability if the harm resulted from misuse, alterations, or modifications to the product. Similar to the previous example, a product's manufacturer cannot be held accountable if the item was bought by an employer for use at the workplace and the employer received the necessary warnings and instructions, if the item was legally intended to be used under expert supervision, or if the item's danger is obvious or well known to the user or consumer.

Territorial Jurisdiction

According to CPA 2019, complaints may be filed where the complainant resides or regularly earns a living. The aforementioned provision contrasts with the previous 1986 Act, which allowed for the filing of complaints when the opposing party—or each opposing party, if there are more than one—actually and voluntarily resides, conducts business, maintains a branch office, or personally works for gain at the time the complaint is instituted.²⁹ Understandably, this will assist customers in bringing legal action within their own jurisdiction, as they won't need to fly across states or cities to seek out legal recourse.

Conclusion

The above mentioned are some of the reforms in the consumer protection legislation in India. Long-standing unfair trade practises and market manipulation have negatively impacted

²⁸ *Lilley v. Johns-Manville Corp.*, 408 Pa. Super. 83, 596 A.2d 203, 207 (1991)

²⁹ Section 11 (2), Consumer Protection Act, 1986

consumers. CPA, 2019 addresses all of the main issues that a loyal customer could encounter. This might also serve as a warning to sneaky participants engaging in unethical business activities. The CPA of 2019 has increased consumer power by shifting the responsibility for responsibility and caution on the manufacturers, sellers, and service providers.