

ANALYSIS OF CONSUMER PROTECTION ACT

by

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OLD ACT: Humans have perfected the skill of obtaining services to meet their daily requirements. Our daily lives revolve around utilizing the commodities and services available to us in order to live a comfortable and stress-free existence. We become 'consumers' when we use these services. We effectively devour the assets around us, as the name implies.

The term “consumer” has been defined in Section 2 (1) (d) of the Consumer Protection Act, 1986 as: **“any person who buys any goods for consideration or hires/avails any services for consideration”**.

History: The Old Testament and the Code of Hammurabi both reference consumer protection, but primarily from a mercantile standpoint. In the United States, where the foundations for the formation and expansion of monopoly and oligopolistic capitalism were laid, an early kind of consumer defense movement arose.¹ The first consumer organizations were founded in Denmark in 1947 and the United Kingdom in 1955, when the government established the Consumer Council to give consumers a voice on matters that were previously reserved for manufacturers and traders.²

The Single European Act, however, was the major normative breakthrough; it amended the Treaty of Rome by reaffirming the role of the Economic and Social Committee, which was given powers to protect consumers. The above-mentioned legislation has undergone several significant revisions throughout the years, paving the way for a broader consumer policy.

Landmark Case: The wording "consideration paid or agreed to be paid by the consumer, as the case may be" left a large gap in the accurate interpretation of the jurisdiction requirements and

¹ G. Alpa, “Il Diritto dei Consumatori”, Bari, 1995, p. 12 <https://blog.ipleaders.in/analysis-consumer-protection-laws-india/>

² F. Silva, A. Cavaliere, “I diritti dei consumatori e l’efficienza economica, in “La tutela del consumatore tra mercato e regolamentazione”, a cura di F. Silva, Roma, 1996, p.12

invited a range of conflicting perspectives on this topic. In *Rajnish Bhasin v. Jaypee Infratech*, the value of the flat in question was roughly INR 53,00,000/-, of which the customer paid INR 48,00,000/-, and a refund of the money paid was sought as relief. In this judgement, the NCDRC distinguished between circumstances in which a refund is requested and those in which the parties plan to complete the sale transaction.³ It was determined that "consideration paid at the time of hiring the opposing party's service may also decide the pecuniary jurisdiction in certain circumstances, particularly in cases of return, where no more money is to be paid." In conclusion, because the amount paid and sought as a refund (INR 48, 00,000/-) plus interest at 18% did not exceed INR 1 crore (the NCDRC's pecuniary jurisdiction), the case was ruled unmaintainable before the NCDRC.

Consumer Protection Rights:

- Right to Safety- A consumer has the right to insist on the items' quality and guarantee before making a purchase. They should ideally choose an ISI or AGMARK approved product.
- Right to Choose- Consumers should be able to select from a wide range of items at a reasonable price.
- Right to be informed- Buyers should be provided with all required product details in order for them to act wisely and amend their purchasing decisions.
- Consumer Education: Consumers should be aware of their rights in order to avoid being exploited. Ignorance may end up costing them even more.
- The consumer's right to be heard means that they will be given adequate time to air their issues in a relevant forum.
- The right to seek compensation describes the consumer's right to seek restitution in the event of unfair or inhumane actions or exploitation.

The Consumer's Responsibilities:

³ IV (2018) CPJ 516 (NC) <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/1093688/pecuniary-jurisdiction-under-the-consumer-protection-act-2019--a-concept-evolving-backwards>

- Consumers have a responsibility to be aware of the safety and quality of products and services before acquiring them.
- Consumers should be concerned about what they want and need, and should be able to make independent decisions as a result.
- Responsibility to speak up- Buyers should not be afraid to air their problems and tell sellers exactly what they want.
- Responsibility to complain- It is the consumer's responsibility to voice and register a sincere and fair complaint about their discontent with goods or services.
- Ethical Consumer Responsibilities- They should be honest and not engage in any misleading practices.

Procedure of filing: According to 1986 Act the consumer has to file within 2 years of purchasing the item. The consumer should describe the problem in detail in the complaint. This might be in the form of a product swap or replacement, as well as recompense for mental or physical torture. The declaration, however, must be reasonable. Keep all pertinent receipts and bills and submit them to the complaint letter. As you file a complainant it should be any particular language. A formal complaint should then be emailed, registered mail, faxed, or hand-delivered to the consumer forum. Receipt of acknowledgement is critical and should not be overlooked.⁴

As we have mentioned about consumer protection Act, 1986 let us now look at the new amended Act of 2019

New Act: E-Commerce Transactions Are Covered: The New Act has broadened the definition of "consumer." Any person who purchases things, whether through offline or online transactions, electronic means, teleshopping, direct selling, or multi-level marketing, is now included in the definition. The previous Act did not directly cover e-commerce transactions, but the New Act fills in that gap.

As per section 2(1) "advertisement" means 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 such

⁴ Consumer Protection Act 1986 <https://byjus.com/commerce/what-is-the-consumer-protection-act/>

other documents. Newly inserted, has to be read with “Misleading advertisement” definition. Misleading advertisement means any kind of false representation.

2) As per section 2(5) “complainant” means- (i) a consumer; or (ii) any registered voluntary consumer association; or (iii) the Central Government or any State Government; or (iv) the Central Authority; or (v) one or more consumers, where there are numerous consumers having the same interest (class-action suit) or (vi) in case of death of a consumer, his legal heir or legal representative; or (vii) in case of a consumer being a minor, his parent or legal guardian. The complainant can even appoint an “authorized agent” to represent him.

As per section 2(7), a consumer is the one who either purchases a good or hires a service for consideration, or, the one who uses the goods or avails the service with the permission of the one who had either purchased the good or hired the service. The person who uses the goods for self-employment is also a consumer as per the definition.⁵

Six Consumer Rights [section 2(9)]:-

(i) Right to be protected against
Hazardous goods & services,

(ii) Right to be informed,

(iii) Right to access to variety of goods,

(iv) Right to be heard,

(v) Right to get redressal and

(vi) right to consumer awareness.

In the CP Act, 2019, even “negligence” has been included as deficiency in service.

Unfair Contract [section 2(46)]:- If a contract contains such terms which cause significant change in the rights of a consumer, then such contract is an ‘unfair contract’.

⁵ Laxmi Engineering Works v. P.S.G. Industrial Institute

Consumer Protection Councils: Under the Consumer Protection Act, 2019, sections 3 to 9 deal with consumer protection councils. These Councils are at three levels – (a) Central, (b) State, and (c) District level. The main object of these Councils is to render advice to the Government on promotion and protection of six consumer rights as provided under section 2(9).⁶

- Enhancement of Pecuniary Jurisdiction: The New Act establishes revised pecuniary restrictions. As a result, where the amount of products or services paid does not exceed INR 10,000,000, the district forum can now hear consumer complaints (Indian Rupees Ten Million). The State Commission has jurisdiction over disputes with a value of more than INR 10,000,000 (Indian Rupees Ten Million) but less than INR 100,000,000 (Indian Rupees One Hundred Million), and the National Commission has jurisdiction over disputes with a value of more than INR 100,000,000 (Indian Rupees One Hundred Million) (INR One Hundred Million).

- E-filing of Complaints: The New Act gives consumers the option of filing complaints with the jurisdictional consumer forum closest to their home or place of business. Unlike the present practice of submitting it at the point of purchase or where the seller's registered office is located, this is a new practice. The New Act also includes provisions that allow consumers to register complaints electronically and conduct hearings and/or examinations through videoconference. This is done to make the process easier for consumers and to eliminate inconvenience and harassment.

- Creation of the Central Consumer Protection Authority (CCPA): The New Act proposes the creation of a regulatory agency known as the Central Consumer Protection Authority (CCPA) with broad enforcement powers. The CCPA will have an investigation wing, led by a Director-General that will be able to conduct inquiries and investigations into infractions of consumer laws. If a consumer complaint affects more than one (one) individual, the CCPA has been given broad authority to take suo moto steps, recall items, force repayment of the price of goods/services, cancel licences, and initiate class action litigation.

⁶ National Consumer Dispute Redressal Commission <http://ncdr.nic.in/>

- Unfair Trade Practices: The New Act has a broad definition of Unfair Trade Practices that includes revealing personal information given in confidence by the consumer, unless such disclosure is undertaken in conformity with the terms of any other legislation.

Mediation as an Alternate Dispute Resolution Mechanism: The New Act includes mediation as an Alternate Dispute Resolution mechanism, making the process of resolving disputes simpler and faster. This will aid in the resolution of disputes more quickly and relieve pressure on consumer courts, which already have a large number of cases pending.

Overview of the Amendment in District, State and national Commission: Complaint to CCPA: - Any person can file a complaint relating to violation of consumer rights or unfair trade practices or misleading advertisements to the CCPA or Dist. Collector (Section 17).

Appeal to NCDRC: - From the order of Central Authority, appeal lies to National Commission (section 24).

In case of District Forum: Pecuniary jurisdiction: - To entertain complaints where the value of goods or services paid as consideration is up to 1 crore rupees. [Section 34(1)].

After the District Commission, there shall be one State Consumer Disputes Redressal Commission (State Commission in the State. [Section 42(1)].

- It has both original and appellate jurisdiction. For appeal, the losing party who has been directed to pay compensation has to deposit 50% of amount.
- Composition:-1 President + minimum of 4 members [Section 42(3)]. Atleast, one woman shall be there.

National Commission

- After District and State Commissions, there shall be one National Consumer Disputes Redressal Commission (National Commission) at the National level.
- Composition: - 1 President + minimum of 4 members.
- Qualification: - Generally a serving or ret'd. Judge of Supreme Court is appointed as President of National Commission. Rules are not framed till yet.