



# CONSUMER PROTECTION IN CURRENT SCENARIO WITH INDIAN PERSPECTIVE

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## ABSTRACT

*In a business ecosystem, consumers are the most vital elements. A business is not reviewed in isolation but is always considered in a combination with the consumers of its good and services. Given such high level of importance that a consumer has in a business network, it is a matter of great shame that their consumer rights are not protected due to non-availability of effective and stringent laws and the ineffectual redressal mechanisms, especially in e-commerce or online transactions. Though e-commerce has enabled the Indian consumer to cross boundaries of states and countries to procure products of their choice, this increased scope for purchase and sale transactions brought about by e-commerce is not well protected by the various Indian consumer laws. The laws with respect to the same have proved to be stagnant, leaving many of such customers remediless. Non protection of data made available online, ineffective delivery system, misleading advertisements, uncertainty with respect to jurisdiction in case of disputes, are some of the emerging concerns in the field of e-commerce. In the light of the above, this article would in brief, look through the lens on rights which a consumer has in case of online transactions, keeping in background the various Indian consumer laws available namely the Consumer Protection Act, 1986, the Information Technology Act, 2000, the Competition Act, 2000, the Indian Contract Act etc. Recommendations and measures for removal of such lacunae as present in the Indian consumer laws have also been covered under consumer protection act.*

## **INTRODUCTION**

E-commerce -- electronic commerce or EC -- is the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet. These business transactions occur either as business-to-business, business-to-consumer, consumer-to-consumer or consumer-to-business.

The terms e-commerce and e-business are often used interchangeably. The term e-tail is also sometimes used in reference to for online shopping.

## **HISTORY OF E-COMMERCE**

The beginnings of e-commerce can be traced to the 1960s, when businesses started using to share business documents with other companies. In 1979, the American National Standards Institute developed ASC X12 as a universal standard for businesses to share documents through electronic networks.

After the number of individual users sharing electronic documents with each other grew in the 1980s, the rise of eBay and in the 1990s revolutionized the e-commerce industry. Consumers can now purchase endless amounts of items online, from e-tailers, from typical brick-and-mortar stores with e-commerce capabilities, and from one another.

## **CONSUMER PROTECTION LAWS IN INDIA**

When we buy a good or service, we rarely have adequate knowledge about its quality and safety. We are quite concerned about getting cheated. This is when the need for consumer protection arises. In the past few years, the subject of consumer protection has become a matter of increasing public concern because unscrupulous business tactics seriously affect the nation's well-being by contributing to social unrest and by causing undue financial distress to consumers. The consumer is the one who pays to consume the goods and services produced. As such, consumers play a vital role in the economic system of a nation. In the absence of their effective demand, the producers would lack a key motivation to produce, which is to sell to consumers.

The term "Consumer Protection" has undergone several changes with growing consumerism and modification of the common law doctrine of "caveat emptor" i.e. let the buyer beware which permits the seller not to shoulder his liability as it shifts the whole of responsibility on the buyer. During the first half of 20<sup>th</sup> century, the development of consumer welfare societies mushroomed. The President of U.S.A. Mr. John F. Kennedy in his speech to the Congress, while introducing a bill on consumer's right, has outlined four rights of the consumer's, namely:-

- The right to safety.
- The right to be informed.
- The right to choose.
- The right to be heard.

This bill of Consumer's Right is now regarded as the magna carta of the rights of consumer.


In India the consumer movement started since 1960 which travelled a long distance to reach to the middle class consumers in 1980. The making of Consumer Protection Act commenced in January 1986, with an All India Seminar held in New Delhi.

The Consumer Protection Act, 1986 (CPA) is an Act that provides for effective protection of interests of consumers and as such makes provision for the establishment of consumer councils and other authorities that help in settlement of consumer disputes and matters connected therewith.

The CPA seeks to protect the interests of individual consumers by prescribing specific remedies to make good the loss or damage caused to consumers as a result of unfair trade practices.

### **SCOPE OF COUNSUMER LAW**

Broadly speaking, the CPA seeks to protect the following basic rights of consumers:

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- Right against the marketing of goods and services which are hazardous to life and property;
  - Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services;
  - Right to choice, wherever possible through access, to a variety of goods and services at competitive prices;
  - Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
  - Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers;
  - Right to consumer education; and
  - Right to clean and healthy environment.

### **Who is a consumer?**

Section 2(d) of the CPA defines "consumer" as a person who:

"(a) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for a consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose;

(b) Hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for a consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose. It may, however, be noted that "commercial purpose" does not include use by a person of goods bought and services exclusively for the purposes of earning his livelihood by means of self-employment."

### **Expression "Consumer"- As interpreted by the Supreme Court**

In *Spring Meadows Hospital v. Harjal Ahluwalia*, the Apex Court has said that extent of persons covered by the expression "Consumer" for claiming compensation, a liberal approach is desirable. Where a child was taken to a private hospital by his parents, said child as well parents could be covered by the expression "consumer" and both of them will be entitled to claim damages on account of negligence on the part of the hospital, its members and doctors.

In the present case, interpretation of clause ii of section 2(1) (d) was involved. In the said clause a consumer would mean a person who hires or avails of any services and includes any beneficiary of such services other than the person who hires or avails of the services. When a young child is taken to a hospital by his parents and the child is treated by the doctor, parents would come within the definition of "consumer" having hired the services and the young child would also become a consumer

### **Object and Purpose of the Consumer Protection Act, 1986:-**

According to Supreme Court of India in terms of preamble of the Consumer Protection Act, 1986, the Act being a beneficial legislation and therefore, the provisions of the Act must receive a liberal construction.

The United Nations has passed a resolution indicating certain guidelines under which the government could make law for better protection of the interest of the consumers. Such laws were more necessary in the developing countries to protect the consumers from hazards to their health and safety and make them available speedier and cheaper redress. Consumerism has been a movement in which the trader and the consumer find each other as adversaries. The Act gives comprehensive definition of "consumer" who is the principal beneficiary of the legislation.

The object of legislature envisaged under the Consumer Protection Act is for redressal of grievance of consumers. They wanted to protect the interest of consumers against the exploitation by traders or manufactures. Therefore, legislation was introduced and enacted with enthusiasm as a benevolent legislation objected to protect consumer from unfair trade practices, exploitation by unscrupulous traders or manufacturers of goods.

The Act provides three-tier forum for redressal of consumer's grievances,

- Firstly, the District Forum at district level,
- Secondly, the State Forum at State level and it is called the State Commission and,
- Thirdly, the National Commission at the National Level.

The main object behind the constitution of Forums at three-tier levels, namely to ensure speedy redressal of consumer disputes where complainant was not required to undergo long-drawn litigation reflecting so much financial burden on him.

### **Consumer Protection Council**

The interests of consumers are sought to be protected and promoted under the Act inter alia by establishment of Consumer Protection Councils at the District, State and National levels.

### **REDRESSAL MACHINERY UNDER THE ACT**

The Act provides for a three-tier quasi-judicial redressal mechanism at the District, State and National levels for redressal of consumer disputes and grievances, namely:

National Consumer Disputes Redressal Commission (commonly known as National Commission)

It has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, exceeds Rs.10,000,000 (Indian Rupees 10 Million).

State Consumer Disputes Redressal Commission (commonly known as State Commission)

It has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, exceeds Rs 2,000,000 (Indian Rupees 2 Million) but less than Rs 10,000,000 (Indian Rupees 10 Million).

### **District Consumer Disputes Redressal Forum (commonly known as District Forum)**

It has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, is less than Rs 2,000,000 (Indian Rupees Two Million).

### **Applicability of the Law of Limitation**

The District Forum, the State Commission and/or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. However, where the complainant satisfies the Forum/Commission, as the case may be, that he has sufficient cause for not filing

the complaint within two years, such a complaint may be entertained by such Forum/ Commission after recording the reasons for condoning the delay.

### **Remedies under the CPA**

Depending on the facts and circumstances, the redressal forums may issue orders for one or more of the following relief(s):

- Removal of defects from the goods;
- Replacement of the goods;
- Refund of the price paid;
- Award of compensation for the loss or injury suffered;
- Withdrawal of the hazardous goods from being offered for sale; or
- Award for adequate costs to parties.
- Removal of defects or deficiencies in the services;

### **OBJECTIVE OF THE STUDY:**

The main objective of the study are to see the consumer rights awareness in urban and rural areas of Muzaffarnagar & Saharanpur districts and also see the functioning of District Consumer forums of both districts. The research is aimed to heighten the magnitude of problem of the consumer rights awareness among the people of these districts the study also concentrated what rights are available to the consumers under the Consumer Protection Act, 1986. Along with the socio legal study is to examine the applicability of these rights in Muzaffarnagar and Saharanpur. Along with the research is aimed to test the hypothesis that existing beneficial under consumer protection laws, judicial pronouncement are sufficient then why laws, policies and welfare system is not being effective and problem of consumer rights awareness is still subsisting. The specified objectives are:

- 1) To find out consumer rights awareness level and its role to protect the interest of consumer.
- 2) To find out the level of consumer awareness regarding their rights and responsibilities.
- 3) To find out the level of consumer awareness regarding Consumer Protection Act, 1986
- 4) To find out the attitude of consumers towards the enforcement of consumer rights.
- 5) To find out the attitude of consumers towards the enactment and implementation of Act.
- 6) To find out the consumer opinion about the Act in respect of its utility and effect.
- 7) To find out ways and means to popularize consumer movement.
- 8) To find out consumer understanding about the malpractices and cheating in the market.
- 9) To analyze the working Muzaffarnagar and Saharanpur, District Consumer Forums.

10) To suggest measures for their effective functioning.

## **PROTECTION OF CONSUMER IN INDIA**

It is high time that the long-term Consumer Protection Amendment Bill is passed by Parliament. Consumers continue to be at the receiving end.

For instance, the revelation made in a recent response to an RTI query by the Reserve Bank of India that banks cannot be held responsible for the loss of valuables kept in bank lockers has come as a rude shock. This has put a big question mark over the safety of valuables/documents stored in bank lockers for safe-keeping.

But the crucial issue is this — the proposed Bill requires the inclusion of more provisions to deal with the fast changing technological and market dynamics, e-commerce being the latest.

Many developments which have altered the market dynamic significantly both from a retail and a technological perspective were not envisaged by the creators of the Act. Even after three amendments to The Consumer Protection Act 1986 in 1991, 1993 and 2002, the problems remained unresolved and new ones continue to mushroom.

The Act in its present form is an inefficient piece of legislation, not keeping pace with the new market dynamics, multi-layered delivery chains, and innovative and often misleading advertising and marketing machinery.

The main problem is with the implementation procedure. The Act doesn't grant the authority to proceed against any person guilty of a violation under the Act or take *suo motu* cognisance of an unfair trade practice or an action undermining the rights of a consumer. Penal steps can be taken only through a judicial process before the State or District Consumer Redressal Forums.

Unfortunately, as is the case with our judicial machinery, these forums are plagued by administrative issues. For example, the National Consumer Disputes Redressal Commission is grappling with appeals and original complaints filed in the period 2008-2010, which means consumers are being made to suffer for an average of five years to get their grievances redressed.

The Maharashtra State Consumer Disputes Redressal Commission has recently opened up cases kept aside in the *sine-die* list for the period 1998-2004; this is just an illustration of the ground level scenario from one State.

Thus, in an effort to replace a 29-year-old piece of legislation, the Centre approved a new Consumer Protection Bill 2015 in July 2015. The new legislation seeks to provide a comprehensive framework to protect consumer interest and would ultimately replace the Consumer Protection Act 1986.

The Consumer Protection Bill 2015 was introduced in Lok Sabha on August 10, 2015, by Minister of Consumer Affairs, Food and Public Distribution Ram Vilas Paswan and was opened for comments by the general public and stakeholders; these were reproduced in the report of the Parliamentary Standing Committee on Consumer Affairs published in April 2016.



The new Bill includes the establishment of an executive agency, the Central Consumer Protection Authority (CCPA), which will protect and enforce the rights of consumers.

The authority will intervene whenever necessary to protect consumers from unfair trade practices and initiate class action including enforcing recall, refund and return of products. This body will act in a manner similar to enforcement agencies in other jurisdictions such as the Federal Trade Commission (FTC) in the US. This will be a landmark step in upgrading the implementation mechanism to global standards.

Besides, in order to ensure safe products to consumers, the Bill has a provision for product liability and provides enough powers to the regulatory authority to recall products and cancel licences if a consumer complaint affects more than one individual.

This is the first time that powers to take action for damage caused by a product have been introduced in a consumer protection framework. This step will act as a deterrent for manufacturers since the liability quotient has increased.

The Bill also has several provisions aimed at simplifying the consumer dispute resolution process. They include enhancing the pecuniary jurisdiction of the Consumer Grievance Redress Agencies, power to State and District Commissions to review their orders, and setting up a 'circuit bench' in order to facilitate quicker disposal of complaints.

The Bill also proposes to set up Consumer Mediation Cells which will be attached to the redressal commissions at the district, State and national levels which will further help reduce the backlog of cases and lessen the strain on redressal forums.

Hopefully, these proposals will lead to significantly reducing the huge backlog of cases and prevent further stalling of disputes. The new Bill is proposed on the lines of institutions in the US, and in European countries which provide that a consumer protection law should derive its basis from the contract law and the law of sale of goods, without which the law of consumer protection tends to be confusing and conflicting.

Due to tremendous increase in the popularity of e-commerce, the proposed amendment attempts to include e-commerce transactions under the ambit of the Act. Under the current Consumer Protection Act, a consumer can initiate legal action against a seller only in the place where transaction takes place. The new Bill contains an enabling provisions for consumers to file complaints electronically, and in consumer courts that have jurisdiction over the place of residence of the complainant.

At present, the Government has made about 80 changes in the Bill which will replace the Consumer Protection Bill introduced in Parliament in 2015 based on recommendations of the Parliamentary Standing Committee. The committee, among other things, has recommended stringent provisions to tackle misleading advertisements, as well as to fix liability on endorsers and celebrities.

The Bill was proposed to be tabled in the last Budget session but since the amendments were not incorporated it wasn't tabled. The delay has extensive negative ramifications which will expand exponentially unless a new framework is brought about.



The Centre has been introducing several policy measures to improve the economic climate in the country in order to attract more investments. Introduction of GST is the most recent amongst these measures.

But policymakers and law-makers must understand that in the absence of an effective, modern and updated consumer protection framework, these initiatives will be akin to watering a dead plant. Consumers are the backbone of the economy and no actual progress can occur without safeguarding their interests.

### **KOLKATA HOSPITAL, 3 DOCTORS TOLD TO PAY RS. 5.96 CR. FOR NEGLIGENCE**

In the highest ever compensation awarded in a medical negligence case, the Supreme Court on Thursday asked Kolkata-based AMRI Hospital and three doctors to pay a whopping Rs 5.96 crore along with interest to a US-based Indian-origin doctor who lost his 29-year-old child psychologist wife during their visit to India in 1998.

A bench of justices C K Prasad and V Gopala Gowda raised the compensation amount of Rs 1.73 crore, awarded by the National Consumer Dispute Redressal Commission (NCDRC) in 2011, to Rs 5.96 crore to Kunal Saha, an AIDS researcher in Ohio, and asked the Advanced Medicare and Research Institute (AMRI) and the doctors to pay the amount within eight weeks along with interest at the rate of 6 per cent from the date of filing of the case in 1999.

Terming the verdict as “historic”, Dr. Saha in an email from the US said, “this will have a major impact on medical negligence and standard of medical care in India”.

### **SUGGESTIONS**

To protect consumer rights process of filing complaint and resolution needs a drastic improvement. Strict guidelines should be made to resolve cases under minimum time period a separate department is needed that can act within 24 Hours of consumer grievance and help consumer to file complaint. Review from consumers should also be taken regarding these departments. And suo moto investigation should be taken up by government agencies to help consumer get redressal even in complex cases.

A separate department is required to regulate the jewellery market who fleece the innocent public by charging people of making and wastage charges. There should be a body to assess the entire process of the industry and set standards for the industry so that the innocent (particularly the middle and lower middle class) are not misled and made to pay heavily. The Government should make it mandatory to follow the regulations set by the Govt including the quality of the product.