



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Consumer Protection Act of 2019: Need for Legislative Reform

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Received 20 July 2021; Accepted 09 August 2021; Published 12 August 2021

The Consumer Protection Act of 1986, though remarked to be socio-beneficial legislation, failed to address many concerns and functioned poorly due to an inadequate organizational set-up, grossly deficient infrastructure, and lack of qualified members with trained and adequate manpower. Consumer Protection Act of 1986 was a step in the right direction in dealing with consumers' rights violations and unsustainable consumption, it lacked clarity about certain aspects related to product liability, contained loopholes in its institutional mechanisms. The Act underwent subsequent amendments and was finally enacted in 2020 taking cognizance of many of its structural and organisational defects. However, there still exists room for further reform to ensure that consumer rights are upheld. This paper aims to address the gaps that exist within the legal framework of the present act and shed light on the absence of certain provisions which in the long run can contribute to unsustainable modes of consumption and negatively impact consumer interests.

Keywords: *consumer, protection, reform.*

INTRODUCTION

Consumer protection is the process of safeguarding consumer interests from fraudulent or misleading practises of the marketplace. It essentially aims to bestow protection to individuals, to provide protection from products or services hazardous to their health and safety, extend protection to socially and financially disadvantaged individuals, provide adequate

information about the nature and quality of the service or products to enable individuals to make informed choices, for the promotion and protection of the economic interests of consumers, and to ensure effective consumer dispute resolution and redress.

According to the United Nations Guidelines for Consumer Protection¹, unsustainable patterns of production and consumption in industrialised countries are the main causes for the continuous deterioration of the global environment. It stated that there happens to be an imbalance between the service providers and the consumers either economically, educationally, or in terms of bargaining power, which in the long run contributes to unsustainable consumption and results in consumer rights violations.

In India, though the Consumer Protection Act of 1986 was a step in the right direction in dealing with consumers rights violations and unsustainable consumption, it lacked clarity about certain aspects related to product liability, contained loopholes in its institutional mechanisms as reported by CUTS International and IIPA², and didn't expressly deal with e-commerce transactions. Following this, the Act was amended in 2019 and enacted with the addition of various provisions. The Consumer Protection Act of 2019 now includes e-commerce transactions, the establishment of a Central Consumer Protection Authority, filing of complaints and attending hearings online, the concept of product liability, criminalization of certain practises, mediation as a method of alternate dispute resolution for speedy disposal of cases, and enhancements in pecuniary jurisdiction³.

It's pretty evident that the Consumer Protection Act of 2019 has included many of the general principles pertaining to consumer protection as laid by the OECD⁴ such as responsible endorsements, redress, transparency in the disclosure of information, and fair and flexible

¹ United Nations Conference on Trade and Development, 'United Nations Guidelines for Consumer Protection' (*Unctad.org*, 2021) <https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf> accessed 09 July 2021

² CUTS International, 'State of The Indian Consumer Report 2012' (*Cuts-cart.org*, 2021) <https://cuts-cart.org/pdf/Overview-State_of_the_Indian_Consumer-2012.pdf> accessed 09 July 2021

³ Consumer Protection Act 2019

⁴ 'OECD ilibrary | OECD Recommendation Of The Council On Consumer Protection In E-Commerce' (*Oecd-ilibrary.org*) <https://www.oecd-ilibrary.org/industry-and-services/oecd-recommendation-of-the-council-on-consumer-protection-in-e-commerce_9789264255258-en> accessed 09 July 2021

contracts to ensure fair market competition. However, there still exist provisions under the contemporary act relating to unfair contracts, digital services, and content and regulations that can be modified to avoid exploitation coupled with strategic implementation strategies to ensure that the intention behind the enactment of this act is achieved. This paper aims to explore the ways in which these technicalities can be modified and stress the need to ensure the effective implementation of this act.

CONSUMER PROTECTION ACT OF 1986: NEED FOR LEGISLATIVE REFORM

The enactment of the consumer protection act of 1986 was opined to be socio-beneficial legislation that attempts to remove the helplessness of a consumer when they face powerful business which is often “described as a *network of rackets* or a society in which *producers have secured power to rob the rest*. The court observed that the might of the public bodies is degenerating into store houses of inaction where papers do not move from one desk to another as a matter of duty and responsibility, but for extraneous considerations leaving the common man helpless, bewildered, and shocked. The malady is becoming so rampant, widespread, and deep that society instead of bothering, complaining, and fighting for it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of the time succeed in checking the rot.”⁵ While the objective with which the act was enacted was to improve the standard of living and protect consumer rights violations, there was:

- Inadequate awareness amongst consumers regarding their right to safety
- Absence of or inadequate information on the quality of services and products provided and the risks associated with them.
- Indifference and callousness amongst manufacturers, sellers, and service providers in the implementation of important safety norms.

⁵ *Lucknow Development Authority v M K Gupta* 1994 AIR 787 1994 SCC (1) 243 JT

- Absence of interest by regulatory authorities in being proactive and implementing safety regulations⁶.

It was realised that, even though the Government and the Courts laid down rules and restrictions, in an attempt to prevent rights violations, the real problem was with the delay and disinterest in the implementation of instructions by the authorities concerned coupled with the disregard and lack of cooperation from the consumer's part. The callous attitude of the authorities concerned could be understood by taking cognizance of the Supreme Court order pertaining to the ban of crackers that generate noise over 125 decibels⁷. However, despite the issuance of this order, these crackers are still available for purchase during Diwali and the firework disaster that took place in a Kerala temple which resulted in the death of over a hundred devotees in spite of the denial of permission by both the Additional District Magistrate and District Collector bear testament to the same.

In the case of "Common Cause vs. Union of India,"⁸ the Supreme Court issued instructions to all States and Union Territories in 1989 to establish District and State Commissions by six weeks. However, in 1992, the Supreme Court observed that "to say the least the emerging scenario is far too depressing, betraying a total lack of willingness on the part of most of the States to seriously implement one of the most benevolent legislation. It is such indifference, which renders well-meaning legislation intended to protect a large body of consumers from exploitation ineffective."

In regards to case disposal, the disposal rates were over 90% but there was a significant delay in the hearing of the case from the date of its institution. The purpose with which the three-tier mechanism was established- which was to provide speedy and inexpensive justice, wasn't effectively achieved and there were problems within the machinery that contributed to this

⁶ Government of India, 'Report of The Working Group on Consumer Protection' (Department of Consumer Affairs Ministry of Consumer Affairs, Food and Public Distribution 2013)
<https://niti.gov.in/planningcommission.gov.in/docs/aboutus/committee/wrkgrp12/pp/wg_cp2.pdf>
accessed 10 July 2021

⁷ Nidheesh M K, 'More Than 100 Killed In Kerala Temple Fire' (*mint*, 2016)
<<https://www.livemint.com/Politics/X6MHUFs2L4LeomWLPePBvL/Kerala-tragedy--Fire-outbreak-during-a-temple-festival-kill.html>> accessed 10 July 2021

⁸ *Common Cause v Union of India I* (1993) CPJ 1 (SC)

delay as well⁹. Another criticism the act attracted was in regards to its compensatory nature, which according to various stakeholders wasn't a strong deterrent and was a contributing factor to repeated violations. All these factors coupled with the exclusion of e-commerce contracts and e-services necessitated the need for legislative reform.

ANALYSIS OF THE CONSUMER PROTECTION ACT OF 2019

Modernization and advancements in technology have ironically made our lives simpler and more complex. The simplicity it has brought us extends to the delivery of door-to-door services, increased productivity, resourceful dissemination of information, effective time management, increased scope of access to goods and services, convenient payment mechanisms, etc. The complexity it brings is data vulnerability, cyber-attacks, propagation of misinformation, privacy rights violations, and in the context of this paper, increased imbalance in the bargaining power between the seller and the consumer in E-commerce contracts.

It is due to this reason that most countries have comprehensive consumer protection laws that aim to protect the rights of consumers by imposing restrictions and penalties on sellers, manufacturers, and service providers. In India, the Consumer Protection Act of 1986 reinforced the transition from caveat emptor to caveat venditor legislatively and provided a flexible "legal framework with wide jurisdiction and access to inexpensive justice to protect consumer rights".¹⁰

However, the laws weren't punitive or preventative, but merely compensatory, the Act struggled with effective implementation, became outdated due to the fast-paced advancements in technology, and delayed the process of grievance redressal by the consumer courts, all of which necessitated the need for legislative reform. The Consumer Protection Act was subsequently amended in 2002 and 2019, and the Consumer Protection Act of 2019 has effectively incorporated many of the recommendations provided by the OECD and the UN, essentially making it more comprehensive and efficient.

¹⁰ *S K Abdul Sarkar v State of Orissa* CPJ II (1991)

It has introduced new provisions pertaining to product liability, criminalization of certain acts, the establishment of a Central Consumer Protection Authority, mediation as a method of consumer dispute resolution, enhancement in pecuniary jurisdictions, e-commerce transactions, and e-filing and hearing of complaints.

RECENT ADDITIONS

Product Liability¹¹:

Under Chapter-VI of the Act, the complainant is entitled to institute a suit for harm caused by a defective product manufactured, serviced, or sold by a product manufacturer, service provider, or seller respectively. It imposes strict liability on the manufacturer for manufacturing a defective product, a product that doesn't conform to its specifications, deviates from express warranty, or doesn't provide adequate instruction regarding its usage or intrinsic harms associated with it. It imposes liability on service providers if they fail to provide adequate information, negligently discharge their services causing harm, and don't render their services in conformity with the express warranty. A seller will be liable if they have exercised substantial control over the process of creation of the product, altered the product so as to cause harm, provided an express warranty independent of one issued by the manufacturer, and the product failed to conform to this warranty, has failed to exercise reasonable care, and if the identity of the manufacturer isn't known or the laws in India don't apply to them. The previous act merely compensated for the cost of the product while the new act factors in injury or harm caused.

Criminal Liability¹²:

Unlike the 1986 Act that merely provided compensation, the present act imposes criminal liability in cases of non-compliance with its provisions. It provides a two-year sentence for first-time misleading advertisements and five years for every subsequent offence. In the case of the usage of adulterants, it rewards imprisonment for 6 months in case there is no injury to the

¹¹ Consumer Protection Act 2019, s 82

¹² Consumer Protection Act 2019, s 88, s 89, s 90, s 91

consumer, one year if there is an injury that doesn't amount to grievous hurt, seven years for injury amounting to grievous hurt, and more than seven years in cases of death. In the cases of grievous injury and death- they are cognizable and non-bailable. The same sentences apply for manufacturing, selling, storing, distributing, or importing spurious goods. A provision also exists for suspension and revocation of licenses in cases of first-time and repeat offenders respectively. The above sentences are coupled with heavy fines ranging from one lakh to fifty lakhs rupees.

Central Consumer Protection Authority¹³:

The present act provides for the establishment of a Central Consumer Protection Authority, which is to be concerned with the regulations of matters pertaining to consumer rights violations, unfair contracts and trade practises false or misleading advertisements that are detrimental to the interests of consumers either individually or as a class. They have also been empowered to take *suo moto* cognizance of complaints that inhibit the enjoyment of consumer rights and are concerned with the institution of safeguards for consumer protection. They will also be concerned with raising and promoting consumer awareness amongst consumers regarding their rights and undertaking research pertaining to the same.

Mediation¹⁴:

Under the new act, the district commission may, if elements of settlement exist, refer the matter to mediation, and upon the receipt of written consent from the parties involved in the consumer, dispute refers the matter within five days to mediation. There also exists a provision pertaining to the establishment of a mediation cell. This provision will effectively ease the burden on the consumer courts.

Pecuniary Jurisdiction¹⁵:

¹³ Consumer Protection Act 2019, s 10

¹⁴ Consumer Protection Act 2019, s 37

¹⁵ Consumer Protection Act 2019, s 34, s 47, s 58

As per the 2019 Act, the pecuniary jurisdictions for District, State and National Commissions are to be determined on the basis of “value of goods or services paid as a consideration” as opposed to the 1986 act which determined the pecuniary jurisdiction to be based on “value of goods and services and compensation, if any claimed”. The reason for the incorporation of the change could be due to exaggerated claims of compensation demanded on account of mental agony, harassment, etc.¹⁶, in order to bring the case under the jurisdiction of State or National Commissions. However, the enhancements of the pecuniary jurisdiction under the 2019 act from 20lakhs to 1 crore (district), 20lakhs-1 crore to 1-10 crore (state), and 1 to 10+ crores (National) will increase the number of cases at the district level and may even lead to overburdening and delay in verdicts.

E-Commerce and E-filing¹⁷:

The new act has widened the scope of commerce to include electronic commerce, i.e., transactions that are facilitated via the internet. It has also included a provision that permits the filing of complaints electronically as opposed to the previous practise of instituting a suit physically at the district, state, or national level.

LIMITATIONS OF THE CONSUMER PROTECTION ACT OF 2019

Consumer¹⁸:

The first limitation under the new act is in regards to the definition of consumer. “A consumer is defined as an individual that buys goods or hires or avails any service for some consideration”. The issue that this definition raises is the exclusion of individuals that avail services for free. While there may not be monetary and financial loss, more often than naught, digital content and services are supplied to consumers in exchange for the transfer of personal data. For example, video streaming services often permit a free one month trial period or

¹⁶ Rohan Batra Dhruv Sethi, 'Pecuniary Reforms Under The New Consumer Law' (*Bar and Bench - Indian Legal news*, 2020) <<https://www.barandbench.com/columns/pecuniary-reforms-under-the-new-consumer-law>> accessed 12 July 2021

¹⁷ Consumer Protection Act 2019, s 2(7)(b), s 101 (2) (p)

¹⁸ Consumer Protection Act 2019, s 2(7)

mobile applications like fitness apps¹⁹, food delivery, and even personalised photo applications permit access to its services in exchange for personal information like credit/debit card information, name, age, phone number, email ID, addresses, access and control to personal pictures and videos of individuals, and the absence of a robust data protection law in India leaves these individuals vulnerable to cyber-attacks, privacy violations and sale of personal data to third parties. Since these individuals wouldn't come under the restricted definition of consumer under the act, they wouldn't be able to seek redressal in case of failure to supply these digital content and services by the service providers, nor would they be able to seek recourse from the vulnerability it exposes them to in the course of sharing personal data. However, under the Single Digital Market Strategy of the European Union, a consumer is defined as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession"²⁰. This broad definition of consumer facilitates the inclusion of individuals that share personal data in exchange for digital content and services and entitles them to a wide variety of contractual remedies.

Unfair Contracts²¹:

Unfair Contracts have been defined as contracts between a consumer and a manufacturer, trader, or service provider. It also defines a service like that which is rendered for some consideration and excludes services provided for free²². This essentially leads to electronic service providers that aren't explicitly mentioned under unfair contracts from escaping liability by contesting that they merely provided a forum for facilitating the transaction and didn't provide an actual "service" as per the definition laid down in this act. The act also excludes S-commerce (S-commerce, social/ social media commerce) to an extent which is essentially the practise of using social networking sites like Instagram, YouTube, Facebook,

¹⁹ 'Unravelling The Indian Consumer - February 2019 - Deloitte' (*Readkong.com*, 2019)
<<https://www.readkong.com/page/unravelling-the-indian-consumer-february-2019-deloitte-2508044>> accessed 12 July 2021

²⁰ European Commission, 'Consumer Rights Directive' (*European Commission - European Commission*, 2021)
<https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive_en> accessed 12 July 2021

²¹ Consumer Protection Act 2019, s 2(46)

²² *CDR V Joshna v The D G Air Force Naval Housing Board* 1991 (2) CPJ 371

Twitter, etc for selling, promoting, and hiring goods and services. While the site might not be directly involved in business-to-consumer transactions, multiple reports have cited sharing of personal data and access to personal data of consumers to businesses²³ and ad agencies to promote and sell their goods and services. This raises the question of data vulnerability once again and leaves individuals exposed to privacy risks as well as inadequate redressal against the electronic service providers. Furthermore, consumers while accessing, browsing, and using websites for e-commerce transactions are forced to agree with its terms and conditions, which are often riddled with technical legal jargon difficult to comprehend by the average person, and often contains clauses and provisions that absolve the electronic service providers from any liability and might even prove to be disadvantageous to the consumers. The exclusion of free of cost service and electronic service providers as a party in unfair contracts goes against the OECD recommendations²⁴ of ensuring fair and flexible contracts for fair market competition. This is a classic example of the exploitation of the imbalance in the bargaining power between businesses and consumers and will prove to be unsustainable in the long run due to its oblique transition from *caveat venditor* to *caveat emptor*.

Cross Border Transactions and International Private Law:

In the context of electronic commerce, consumers experience inequality of bargaining power as a result of the particular risks associated with contracting with foreign sellers, compounded by electronic commerce as follows; “the lack of prior contact with the foreign seller, the consumer’s reliance on the information contained in the seller’s web site regarding the seller’s identity, location and information on the goods/services on offer, the inability of the consumer to view or inspect the goods prior to contracting with the seller, the requirement for the consumer to reveal personal information and pay for goods or services prior to receiving them and the potential risk of interception of the consumer’s personal (including financial) data by third parties”²⁵.

²³ Dave Lee, 'Facebook's Data-Sharing Deals Exposed' (*BBC News*, 2018)
<<https://www.bbc.com/news/technology-46618582>> accessed 15 July 2021

²⁵ Report (n 6)

While the Consumer Protection Act of 2019 has enhanced the scope of pecuniary jurisdiction it still remains mute regarding the liability of manufacturers, sellers, and service providers situated in foreign jurisdictions. The only provision that provides any information regarding the application of Indian law in foreign transactions, is Section 86 (d)²⁶ that mentions the liability of product sellers. It states that “A product seller who is not a product manufacturer shall be liable in a product liability action, if – (d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or *he is not subject to the law which is in force in India* or the order if any, passed or to be passed cannot be enforced against him”.

The questions that arise when dealing with extraterritorial transactions are first, in which jurisdiction should be taken into consideration and secondly what law is applicable. Cross border transactions typically come under International private law rules; however, International private law rules are not concerned with implementing substantive consumer protection policies as such. Instead, the purpose of international private law is to provide rules that will determine the particular jurisdiction and choice of law of a cross-border dispute in a fair and just manner. Once the parties know or have anticipated what jurisdiction will hear any dispute between them, they will then be able to determine whether the *lex fori*²⁷ will apply its own laws, the law that the parties have agreed in their contract, or another law to govern the dispute.

It’s important to factor in the inequality that persists between the consumer and the business when deciding upon the jurisdiction. In India, cross border transactions can be effectively dealt with by taking into consideration “Article 18 of Regulation (EU) No 1215/2012 Of the European Parliament and of the Council”²⁸, which states that the consumer has the power to decide the jurisdiction of the court to lodge the complaint, but restricts the control of the business and mandates filing a suit in the consumer's domicile country. A consumer ought to be provided with juridical protection when contracting with a foreign business via the world

²⁶ Consumer Protection Act 2019, s 86(d)

²⁷ *Lex-Fori*: The law of the country in which an action is brought

²⁸ M K (n 7)

wide web. However, Indian Courts must be equipped and resourced to take up cases involving cross-border disputes in order to prevent the consumer rights violations that are bound to rise due to the increase in the scope of access of Indian consumers to foreign markets.

SUGGESTIONS

In "*State of U.P v All U.P Consumer Protection Bar Assn*".²⁹, it was observed by the court that the implementation of the "Consumer Protection Act of 1986" offers a sobering reflection as to how far the realities lie from the goals and objectives the Parliament sought to achieve via the act. It was observed that the fora constituted under the 1986 act functioned poorly due to an inadequate organizational set-up, grossly deficient infrastructure, and lack of qualified members with trained and adequate manpower. While implementation struggles exist for most legislations in India due to the widespread inequality, imperfect administration, ambiguous demarcation of responsibilities, absence of a vigilant monitoring and evaluation mechanism, diversity of its demography, general indifference and instances of corruption, regular monitoring of websites and electronic service providers can prevent and protect consumer rights violations. In the European Union, "if there is a risk of serious harm to the collective interests of consumers, the competent authorities are empowered to adopt interim measures in accordance with national laws, including the removal of content from an online interface or ordering the explicit display of a warning to consumers when they access an online interface"³⁰. If the CCPA were to adopt interim measures by regularly monitoring e-commerce platforms, instead of waiting for a complaint to be filed, it would promote fair practises and prevent consumer rights violations. Apart from regular monitoring of e-commerce platforms, widening the definition of consumer, service and enacting a provision pertaining to cross-border disputes would go a long way in advancing consumer interests. Another innovative mechanism that could be implemented to balance the inequality between

²⁹ *State of U P v All U P Consumer Protection Bar Assn* 2017 SC 1488

³⁰ 'EUR-Lex - 32012R1215 - EN - EUR-Lex' (*Eur-lex.europa.eu*, 2012) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215>> accessed 15 July 2021

businesses and consumers is the introduction of smart contracts with Blockchain technology³¹, which are essential “programs that automate the execution of agreements so that all parties can ascertain its outcome without third party involvement or time loss”. If the goods are damaged, delayed, or aren’t delivered at all, conditions will be triggered within the Smart contract and the consumer will immediately receive a refund or compensation. Smart contracts reduce the chances of fraud, aren’t riddled with technical legal jargon regarding the burden of proof and procedural laws which in turn reduces the cost of enforcement and litigation. It also renders the cost of cross-border disputes moot as they are independent of applicable law and don’t require personal data reducing the scope of privacy violations as well. While the Consumer Protection Act of 2019 was a step in the right direction, its implementation still has to be monitored, and considering the CCPA’s power to take up research pertaining to consumer rights and behaviour, the Act should undergo further amendments in order to advance consumer interests and promote sustainable consumption.

CONCLUSION

There still persists challenges regarding consumer rights like the imbalance in the bargaining power between consumers and businesses, privacy risks and unwarranted sharing of data, conflicts in cross-border disputes, and delays in the pronouncements of verdicts that contribute to ineffective redressal and consistent right violations. The Consumer Protection Act of 2019, though a step in the right direction, can still go further to advance consumer interests by incorporating provisions to expressly deal with, and tackle the loopholes that can be exploited in the act. Therefore, considering the lacunae that exist in the current act pertaining to the narrow definition of consumer, service, absence of provisions to deal with cross-border disputes, absence of data protection laws, there exists substantial scope for legislative reform.

³¹ Ajar Rab, 'Smart Contracts and Blockchain: The Panacea to The Unequal Bargaining Power of Consumers?' (2020) 8 International Journal on Consumer Law and Practice <<https://clap.nls.ac.in/wp-content/uploads/2021/01/SMART-CONTRACTS-BLOCKCHAIN-THE-PANACEA-TO-THE-UNEQUAL-BARGAINING-POWER-OF-CONSUMERS%e2%80%93Ajar-Rab.pdf>> accessed 15 July 2021