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An Analysis of the Power of Consumer Commissions

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The Consumer Protection Act, 2019¹ has given a wide variety of powers to the Consumer Commissions to further the interests of the consumers. It also expands the scope of the powers given to the Commissions with respect to the old Consumer Protection Act, 1986². This is a major step in ensuring that the consumers are provided with speedy justice without causing any peril to them. This article would look into the different powers given to the Consumer Commissions such as civil powers (including the power to issue orders, enforcement powers, and the applicability of CPC to the Consumer Protection Act), criminal powers, power to review (including revisionary powers), administrative powers (including supervisory and disciplinary powers) and power to make regulations. It also looks into the significance of giving these powers and identifies some lacunae in the Act while providing possible policy changes to the same.

Keywords: *consumer protection, consumer commissions, power.*

¹ Consumer Protection Act, 2019

² Consumer Protection Act, 1986

INTRODUCTION

The Consumer Protection Act, 2019 (hereinafter referred to as Act) is a consumer welfare legislation that was enacted to protect the interests of consumers as a whole. To achieve this objective, the Consumer Protection Act, 2019 has established Consumer Disputes Redressal Commissions (hereinafter referred to as Consumer Commissions) for timely and effective administration and settlement of consumers' disputes. The Act provides for a 3-tier grievance redressal mechanism namely District Commission, State Commission, and National Commission. The Consumer Commissions have been given a variety of powers to help deal with the grievances that a consumer might have. This article would analyze the various powers given to the Consumer Commissions under Consumer Protection Act, 2019 in comparison to Consumer Protection Act, 1986 using primary and secondary sources.

CIVIL POWERS

The most significant power granted to the Consumer Commissions is the power to issue orders to give effect to the findings of the Commissions under S.39³ of the Act. Apart from that, the Consumer Commissions have also been granted the same powers as civil courts under S.38(9)⁴ of the Act for the purpose of trying a suit and under S.71⁵ of the Act for the purpose of enforcement of its orders. This section would deal with the power to pass orders by the Consumer Commissions, the extent of the applicability of the Code of Civil Procedure, 1908⁶(CPC) to the Act, and the quantum of enforcement powers given to Consumer Commissions.

Power to Issue Orders

This power is the most important power for the Consumer Commission as without it the Commission would not be able to pass an order for rectifying the harm caused to the

³ Code of Civil Procedure, 1908, s 39

⁴ Code of Civil Procedure, 1908, s 38(9)

⁵ Code of Civil Procedure, 1908, s 71

⁶ Code of Civil Procedure, 1908

consumer. Under S.39(1), 49(1) and 59(1)⁷ of the Act, the District Commission, State Commission, and National Commission can pass a variety of orders including removal of the defects in goods or deficiencies in the services, refund of the money paid, grant of punitive damages, withdrawal of hazardous goods from the sale, issue of corrective advertisements, etc. The power to enforce such orders is dealt with later.

APPLICABILITY OF CPC TO CONSUMER PROTECTION ACT

A reading of the Act shows that the CPC is not applicable to the proceedings under the Act in its entirety and only some specific provisions of the CPC which are explicitly mentioned in the Act are applicable.⁸This can be explained using the legal maxim “*expressio unius est exclusio alterius*” (translated as “expression of one thing is the exclusion of other”) which means that if all the provisions of the legislation are not included by reference in another legislation, then it is considered that those provisions are intentionally excluded by the legislature.⁹This maxim was used in *Ethiopian Airlines v Ganesh Narain Saboo*, where it was held that the non-inclusion of a specific provision under CPC in the Consumer Protection Act, 1986 should be considered to be deliberately excluded by the legislature.¹⁰ However, the court has also often deviated from this norm. In *Sovintorg (India) Ltd. v State Bank of India, New Delhi*, the court held that even though there was not any express mention of S.34 of CPC in the Consumer Protection Act, 1986, the Consumer Commissions can provide relief to the aggrieved if the provision of CPC is based on “justice, equity and good conscience”.¹¹ Therefore, the applicability of the CPC under the Act can be argued to depend upon the facts and circumstances of each case, and hence, the civil powers given to Consumer Commissions are not fixed.

⁷ Code of Civil Procedure, 1908, 39(1), 49(1), and 59(1)

⁸ Aditya Mehta, Manasvi Nandu, & Sameer Bindra, ‘Extent of Applicability of Code of Civil Procedure, 1908 to Proceedings under the Consumer Protection Act, 1986’ (Cyril Amarchand Magaldas, 7 May 2020)

<<https://corporate.cyrilamarchandblogs.com/2020/05/extent-of-applicability-of-code-of-civil-procedure-1908-to-proceedings-under-the-consumer-protection-act-1986/>> accessed 16 February 2022

⁹ *Ibid*

¹⁰ *Ethiopian Airlines v Ganesh Narain Saboo* (2011) 8 SCC 539

¹¹ *Sovintorg (India) Ltd. v State Bank of India, New Delhi* (1999) 6 SCC 406

ENFORCEMENT POWERS

Under S.71¹² of the Act, the Consumer Commissions have been granted equivalent powers as Courts under Order XXI of the First Schedule to the CPC to enforce its orders. This is a major upgrade as compared to the Consumer Protection Act, 1986 which only gave powers to attach property in case of non-compliance of an order under S.25¹³ of the 1986 Act. This is a step in the right direction as it expands the power given to the Consumer Commissions to enforce its orders and ensure speedy redressal of the aggrieved consumer. Order XXI of the CPC gives greater clarity on various aspects of enforcing the orders of Consumer Commissions in terms of payment of money, attachment of property, and process of execution. However, the Act still does not clarify the appointment of staff for execution of orders which leads to inefficient enforcement of the orders of the Consumer Commissions.¹⁴ Therefore, to overcome this limitation under the Act, the government should specify rules for the appointment of executive officers such as bailiffs (who should be properly regulated by the Consumer Commissions) to carry out the enforcement of the orders.¹⁵

CRIMINAL POWERS

Under S.72(2)¹⁶ of the Act, the Consumer Commissions have been given the powers of a Judicial Magistrate of First Class in case of non-compliance with the order of the Commissions. Also, under S.38(10)¹⁷ of the Act, the District Commissions are to be treated as a criminal court for the purpose of section 195¹⁸ and Chapter XXVI of the Code of Criminal Procedure, 1973 (CrPC). The same applies to State Commissions and National Commission under S.49(1) and S.59(1)¹⁹ of the Act respectively. These powers are substantially different from those given under the 1986 Act as, under the old Act, the Consumer Commissions were considered to be

¹² Code of Civil Procedure, 1908, s 71

¹³ Consumer Protection Act, 1986, s 28

¹⁴ Aditya Ranjan, 'No Force to Enforce: Story of Consumer Commissions and Their Orders' (Vidhi Centre for Legal Policy, 17 April 2020) <<https://vidhilegalpolicy.in/blog/no-force-to-enforce-story-of-consumer-commissions-and-their-orders/>> accessed 17 February 2022

¹⁵ *Ibid*

¹⁶ Consumer Protection Act 1986, s 72(2)

¹⁷ Consumer Protection Act 1986, s 38(10)

¹⁸ Code of Criminal Procedure, 1973, s 195

¹⁹ Consumer Protection Act 1986, s 49(1) and 59(1)

civil courts.²⁰ This change in the status of Consumer Commissions has provided them with wider powers in terms of imprisonment of a person if he doesn't produce a document which the Court requires him to do and punishment of a person on non-obedience to summons issued by the Court.²¹ This change in position of Consumer Commissions is problematic because as per the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020 (Appointment Rules), majority of the members of the Consumer Commissions are from a non-judicial background. These persons do not have the pre-requisite know-how in the field of law.²² This becomes even more important in the exercise of criminal powers as it includes imprisonment which affects the life and liberty of the accused.²³ The Supreme Court, in *All India Judges' Association & Ors. v Union of India & Ors* held that since a criminal court has to decide issues related to the life and property of the litigants, it would not be prudent or desirable to allow persons from non-judicial backgrounds to exercise criminal powers.²⁴ Therefore, appropriate amendments should be made to the Appointment Rules to specify the necessary qualifications of the members of the Consumer Commissions and impart them with the required judicial training.²⁵

POWER OF REVIEW

The Act gives revisionary powers to the Consumer Commissions to revise the order passed by subordinate courts if there is some irregularity in the exercise of jurisdiction under S.47(1)(b)²⁶ for State Commissions and under S.58(1)(b)²⁷ for National Commission. The Act also gives the power to review any of the orders passed by the Consumer Commissions if there is an

²⁰ Consumer Protection Act 1986, s 13(5)

²¹ The Code of Criminal Procedure 1973, s 349 and 350

²² Abhixit Singh & Anurag Pandey, 'Consumer Protection Act, 2019: A Criminal Imbalance' (Live Law, 8 April 2021) <<https://www.livelaw.in/columns/consumer-protection-act-2019-indian-penal-code-ipc-criminal-procedure-code-1973-crpc-172294>> accessed 17 February 2022

²³ *Ibid*

²⁴ *All India Judges' Association & Ors. v Union of India & Ors* 1993(4) SCC 288

²⁵ Abhixit Singh & Anurag Pandey (n 22)

²⁶ Consumer Protection Act 2019, s 41(1) (b)

²⁷ Consumer Protection Act 2019, s 58(1) (b)

apparent error on the face of the record under S.40, S.50, and S.60²⁸ of the Act for District Commission, State Commission, and National Commission respectively. This is different from the position of law under the 1986 Act as it only gave the power of review to the National Commission and not to the District and State Commissions.²⁹ This power of review is extraordinary as this type of power has not been given to any quasi-judicial body under the legislation.³⁰ The position under the 1986 Act was problematic as the consumers had to face various legal hurdles. For example, in order to have a decision of the Consumer Commission reversed in case of an ex-parte interim order, the consumers had to file for a separate appeal to the National Commission which would mean increased litigation costs on the consumers and increased burden on the Commissions.³¹ There have been a lot of contradictory judgments on the issue of whether the District Commissions and the State Commissions have the power to review their own ex-parte orders without there being an express provision under the 1986 Act for the same.³² However, in *Rajeev Hitendra Pathak and Ors. v Achyut Kashinath Karekar and Anr*, the Supreme Court tried to lay rest to the divergent views on the issue by deciding that there was a clear intention of the legislature to bestow the power of review only on the National Commission and therefore, the lower Commissions cannot exercise this power.³³

In *Grindlays Bank Ltd. v Central Government Industrial Tribunal and Ors*, it was held that review is used in two senses.³⁴ The first is a procedural review which is inherent in the Court or a Tribunal to set aside an erroneous order of its own, while the second is a review on merits which has to be explicitly provided under a statute.³⁵ The ratio of this judgment and that of *Hitendra Pathak* can only be reconciled if we consider that power of review in question relates

²⁸ Consumer Protection Act 2019, s 40, 50, and 60

²⁹ Consumer Protection Act 1986, s 22(2)

³⁰ SN Singh, *Review of Commentary on the Consumer Protection Act* (4th Edition); 'Resolving Disputes in Tele Communications: Global Practices and Challenges' (2012) 54 (1) *Journal of the Indian Law Institute*, 105

³¹ Anusha G Rao & Varun Mascarenhas, 'Extending The Power Of Review To Ex-Parte Orders Under CPA, 2019: An Analysis' (Live Law, 9 November 2021) <<https://www.livelaw.in/columns/section-40-of-the-consumer-protection-act-2019-dispute-redressal-commissions-ex-parte-orders-national-commission-185174>> accessed 18 February 2022

³² *Jyotsana Arvind Kumar Shah and Ors. v Bombay Hospital Trust*(1999) 4 SCC 325; *New India Assurance Company Ltd. v R. Srinivasan* (2000) 3 SCC 242

³³ *Rajeev Hitendra Pathak and Ors. v Achyut Kashinath Karekar and Anr* (2011) 9 SCC 541

³⁴ *Grindlays Bank Ltd. v Central Government Industrial Tribunal and Ors* (1980) Supp SCC 420

³⁵ *Ibid*

to the latter of the two review powers.³⁶ This means that the District and the State Commissions do have the power to review their own cases in aspects of the procedural review. However, the Consumer Commissions are still misinterpreting the ratio of *Hitendra Pathak* and wrongly concluding that the lower Commissions don't have powers of review, much to the peril of the consumers.³⁷ This confusion has been removed by the legislature in the new Act, which explicitly gives all the Consumer Commissions the power to review their own orders.

ADMINISTRATIVE & SUPERVISORY POWERS

S.70 of the Act gives administrative control to the National Commission over the State Commissions and the State Commissions over the District Commissions. A wide variety of powers are given to the Consumer Commissions to exercise control over subordinate Commissions in terms of monitoring performance in terms of disposals, investigating into allegations against the President or member of a Commission, issuing instructions regarding the adoption of uniform procedure, and overseeing their functioning by way of inspection.³⁸ The Act also envisages the constitution of a monitoring cell for the same.³⁹ The powers given under this Act are substantially expanded as compared to those given under S.24B of the 1986 Act. This can be traced back to the Supreme Court's judgment in the *State of UP v All UP Consumer Protection Bar Association*, wherein the Court deliberated upon the findings of a Committee formed under Justice Arijit Pasayat.⁴⁰ The Committee identified various lacunae and shortcomings in the 1986 Act.⁴¹ One of them was the lack of clarity with respect to the exercise of administrative and disciplinary control by Consumer Commissions and the generality of S.24B which is governing this power.⁴² The Committee suggested granting full administrative power to the Consumer Commissions and the exercise of this authority be

³⁶ Gitanjali Kapur, 'Power of Review - Consumer Forums' (Live Law, 3 April 2020) <<https://www.livelaw.in/columns/power-of-review--consumer-forums-154716>> accessed 18 February 2022

³⁷ Gitanjali Kapur (n 20)

³⁸ Consumer Protection Act 2019, s 70(1)

³⁹ Consumer Protection Act 2019, s 70(2)

⁴⁰ *State of UP v All UP Consumer Protection Bar Association* (2017) 1 SCC 444

⁴¹ *Ibid*

⁴² *Ibid*

granted to the President of the National and State Commissions.⁴³ The Court, in light of these findings, requested the National Commission to formulate regulations for effectuating the administrative powers granted to it.⁴⁴ The government, to honor the above judgment, gives greater clarity on the administrative powers of the Consumer Commissions and at the same time expanded the powers given to them in the new Act.⁴⁵ It also provided for setting up a monitoring cell constituted by the President of the National Commission in line with the Committee's recommendations.⁴⁶ Concerning disciplinary powers, the Consumer Commissions do not have the power to take disciplinary action.⁴⁷ Since the State Government appointed the members of the Commission, only the State Government has the power to take disciplinary action against the member of the Commission.⁴⁸ The same can be extended for the District and the National Commission.

POWER TO MAKE REGULATIONS

The National Commission has been given the power to make regulations for all matters where it is necessary to give effect to the provisions of the Act under S.103 of the Act. These regulations can be for (but are not limited to) the costs of adjournment by the Consumer Commissions and mediation-related issues.⁴⁹ There hasn't been much of a change in the law regarding this power of Consumer Commissions as compared to the 1986 Act.⁵⁰ An important observation here is that only the National Commission has been given the power to make regulations and it cannot make rules. The rules can only be made by the Central or the State government under S.101 and S.102⁵¹ of the Act respectively. Some of the regulations made by the National Commission under S.103⁵² of the Act are Consumer Protection (Consumer Commission Procedure) Regulations, 2020, The Consumer Protection (Mediation) Regulations,

⁴³ *Ibid*

⁴⁴ *Ibid*

⁴⁵ Consumer Protection Act 2019, s 70(1)

⁴⁶ Consumer Protection Act 2019, s 70(2)

⁴⁷ *Varinder Pal Kashyap v State Consumer Dispute Redressal Commission* (2001) SCC OnLine P&H 758

⁴⁸ *Ibid*

⁴⁹ Consumer Protection Act, 2019, s 103(2)

⁵⁰ Consumer Protection Act, 1986, s 30A

⁵¹ Consumer Protection Act, 2019, s 101, and 102

⁵² Consumer Protection (Consumer Commission Procedure) Regulations, 2020, s 103

2020 and The Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020.

CONCLUSION

The Consumer Protection Act, 2019 has substantially altered the powers given to the Consumer Commissions when compared to the Consumer Protection Act, 1986. The most important among them being - giving criminal powers and power to review own orders to the Consumer Commissions. Most of these changes are welcomed as they further the interest of the consumers as a whole but these changes are not perfect and are susceptible to scrutiny. This article has effectively highlighted some of the limitations in the new Act and suggested changes to remedy those loopholes. However, this does not negate the fact that the Consumer Protection Act, 2019 is a step in the right direction.