THE ADVENT OF CONSUMER PROTECTION ACT, 2019

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ABSTRACT

The Indian Consumer Protection Act, 1986, which was enacted to provide timely relief to consumers who were affected by defective products or poor service, as well as provide both a legal and institutional framework for the protection of consumer rights, has been criticised for being ineffective on some fronts. On the other side, the rise in cases of unfair commercial practises and deceptive advertising prompted legislative adjustments. As a result, the new Consumer Protection Act, which was passed in 2019, aims to impose stricter regulations in order to successfully safeguard customers. For the first time, it provides for 'criminal' remedies by criminalising a few minor infractions. This article focuses on the key ideas covered by the Consumer Protection Act of 2019. In compared to its predecessor, a modest attempt has been made to debate and evaluate certain changes made under this Act.

KEYWORDS: Consumer, Consumer Protection Act 2019, Criminal.

INTRODUCTION:

Despite being a socially beneficial law, the Indian Consumer Protection Act of 1986 had limitations in terms of the sanctions it could impose for actions of "defects in products" or "deficiency in service," since it largely provided for civil remedies. Various forms of consumer victimisation, such as unfair trade practises and illegal and deceptive ads, were not adequately handled by the legislation. Furthermore, it was not explicit enough on product liability issues. There were further reports, such as those from CUTS International1 and IIPA2, that pointed to some flaws in the Act's institutional system. Some were even brought to light as a result of decisions made by dispute resolution forums. As a result, the Act underwent significant modifications in 2019, effectively replacing the 1986 law.

Apart from making several amendments to the legislation, the Consumer Protection Act 2019, which was notified in August 2019, criminalises certain wrongs committed against consumers. This article is an attempt to assess the importance, extent, and potential impact of the enactment's criminal law provisions, both substantive and procedural.

Consumer rights must be maintained in order for any economy to thrive. A consumer is an essential component of any economy since he is the individual who purchases or rents goods or services from a seller, hence increasing employment in the country. As a result, defending consumer rights is critical, because consumer wants and expectations have shifted as a result of globalisation and increased awareness. However, because not all sellers and service providers are legitimate, the availability of a huge number of goods and services can sometimes be harmful to the consumer.

The Consumer Protection Act of 1986 was enacted to address consumer problems and safeguard their interests. It was a commendable step at the time, and it was modified from time to time. However, the country's three-decade-old legislation has not kept up with market and digital technological advances. For example, the Act did not grant the right to pursue a person who had infringed a consumer's rights, therefore customers had to turn to the State and District Consumer Redressal Forums, which merely paid them for their losses. There was no data collecting and no investigation of injuries or deaths caused by defective products or services. In summary, there was no regulatory authority in place to monitor or control violations of consumer rights.

With the passage of the Consumer Protection Act, 2019 and the repeal of the Consumer Protection Act, 1986, a new era in Indian consumer rights has begun, giving consumers greater power than ever before. The Consumer Protection Operate of 2019 establishes a Central Consumer Protection Authority, which will act as a regulatory authority to "promote, protect, and enforce consumer rights as a class." The new laws show a clear change from Caveat emptor (let the buyer beware) to Caveat venditor (let the seller beware), as unfair commercial practises and fraud committed by the vendor will now be punished. The most recent Act also includes provisions for penalties for unfair trade practises and deceptive ads, as well as a slew of other modifications to keep consumer rights current with market changes.

AN OVERVIEW OF THE NEW CONSUMER PROTECTION ACT, 2019:

The Consumer Protection Act attempts to offer consumers with remedies when the things they have purchased are defective or the services they have received are not up to par or have some flaw. The old legislation, such as the Consumer Protection Act of 1986, were in place for 34 years before being abolished, and the New Consumer Protection Act of 2019 went into effect on July 20, 2020. Because our country has become a global village, it was critical to modify the rules governing consumer protection. The new statute has broadened the scope of its authority.

The new act includes provisions for e-commerce. The court hears the complaints through E-interaction and E-hearings after they are filed online (E-filing). This provides public reassurance, which is especially important during a pandemic.

The ability to review adds to the public's benefit. Consumers/forums are given civil court-like powers, allowing them to inflict harsh penalties on defaulters. Unfair trade practises now have a broader definition. It now also encompasses invasions of privacy. All damaged items and services must be replaced within 30 days after receipt.

The customer will gain greatly from the new jurisdiction rule. She/he can submit the case at her/his domicile, as opposed to the previous rule that required her/him to do so at the location of purchase. For example, suppose a customer goes to Mumbai and buys a phone, then returns to Delhi, where he lives, and the phone turns out to be defective during the warranty term. In the event that the cell carrier does not resolve his issue, the client does not need to return to Mumbai; instead, he can submit a complaint in Delhi. As a result, there is a tremendous deal of convenience.

Mediation is discussed in Chapter V of the act. Mediation is increasingly a viable option for resolving disputes. Cases can be resolved fast since the legal procedure is shortened. This is beneficial to both parties involved in the conflict.

The penalties and sanctions have been raised under the new Consumer Protection Act. Because no company wants to pay a huge fee, this ensures that better products and services are supplied to customers. Furthermore, the relief of a judgement on a case brought by one individual is available to all other individuals linked with that judgement (class-action litigation), which saves a significant amount of money.

The Act's Section 69 deals with the forgiveness of delays. If a consumer has valid grounds and explanations, he or she can initiate a case even after the limitation period has passed.

The new act takes a comprehensive approach. If someone fabricates a case, they will be punished in all three forums (Discretionary power). Fake cases will not be registered as a result of this.

As a watchdog, the Central Consumer Protection Authority (CCPA) is in charge. It examines whether the consumer is protected from harmful goods and services. It also performs research and development for consumer safety.

The new consumer protection legislation is a much-needed change in today's day for genuine customers to be protected from a variety of risks and exploitations.

MAJOR CHANGES UNDER THE NEW ACT:

When it comes to revisions in Consumer Protection Law, the Consumer Protection Act of 2019 is truly a watershed moment. The legislators attempted to modernise the old Act by bringing it up to current for today's consumers. Some of the modifications are highlighted in the subheadings below.

Pecuniary limits and other changes to consumer dispute redressal forums
Although the Act maintains the three levels of consumer dispute resolution forums, the monetary boundaries of all three levels have been enhanced.

Up to 1 crore for the District Commission (formed under section 28). (earlier 20 lakhs)

1 to 10 crores - State Commission (formed under section 42) (earlier 20 lakhs to 1 crore)

More than ten crores for the National Commission (formed under section 53). (earlier more than 1 crore)

The District, State, and National Commissions shall have the ability to review any of their orders if an error is apparent on the face of the record, either on their own motion or on the application of any of the parties within thirty days of such order (sections 40, 50 and 60).

Establishment of a regulator:

The Consumer Protection Act, 2019 establishes a regulator for consumer affairs for the first time. The regulator shall comprise of a chief commissioner and other commissioners. The regulator shall have an investigation wing of its own. The major functions of the regulator shall be as follows:

- Investigate or cause an investigation into abuses of consumer rights or unfair trade practises, either on its own initiative or in response to a complaint or instructions from the Central Government;
- Under this Act, register complaints with the District Commission, State Commission, or National Commission, as the case may be;
- Intervene in any proceeding before the District Commission, State Commission, or National Commission, as the case may be, concerning any allegation of breach of consumer rights or unfair trade practises;
- Review concerns relevant to consumer rights and reasons impeding their enjoyment, including safeguards given for consumer protection under any other law now in force, and recommend appropriate corrective actions for their successful execution;
- To ensure effective enforcement of consumer rights, recommend the adoption of international covenants and best international practises on consumer rights; conduct and promote consumer rights research; spread and promote consumer rights awareness; and encourage non-governmental organisations and other institutions working in the field of consumer rights to collaborate and work with consortia.
- The creation of a regulator as well as an investigative branch will be a watershed moment in the protection of consumer rights.

Statutory Recognition of Alternative Dispute Redressal Mechanism:

The biggest issue with the Indian judicial system is the lengthy settlement process, which forces parties to wait years for their rights. The new Act recommends the formation of mediation cells alongside the Central Consumer Protection Authority, in light of the current situation in India's courts, where citizens must wait many years for a court ruling. Because the parties can approach the mediation cells at any moment during the argument, the process of resolving consumer complaints will be sped up.

Introduction of new concepts:

The provision of product liability has been included to the new Act to ensure that consumers receive high-quality products and services. According to product liability, merchants are responsible for refunding customers if the services or items they provide are defective and infringe on the customer's rights. This will enhance the sellers' culpability and act as a deterrent to their selling defective items. Furthermore, the definition of unfair trade practises has been expanded to include the term unfair trade contract.

LIMITATIONS IN THE THEN EXISTING LEGAL APPROACH:

The 1986 Act was enacted to protect the rights and interests of consumers. However, significant limitations were imposed on its provisions as well as its institutional architecture. Despite having specific measures to protect consumers from unfair trade practises and other types of violations of consumer rights, the Act failed to regulate certain wrongs perpetrated against them. The problem of product responsibility was one among them.

Allegations of excessive lead concentration in Maggie noodles, as well as flaws in Volkswagen cars, are just a few examples of events that have generated concerns about the ineffectiveness of legislation in avoiding such incidents. Because defects in products such as food can cause 'harm' to customers, there was a need for a strict and deterrent legal process by which producers, distributors, and others dealing with such products could be held liable.

Another legal issue that needed to be addressed was celebrities supporting goods through commercials, so influencing and, in some cases, misleading consumers in their purchasing decisions. 'Celebrities have a huge effect on customers and are guided by the decisions they make or endorse,' says Srinivasan K Swamy, Chairman, Advertising Standards Council of India (ASCI). Both celebrities and advertisers must be aware of the influence and power of advertising in order to make responsible claims to sell products or services.'

False and misleading advertisements infringe on a number of consumer rights, including the right to information, the freedom to choose, the right to be protected from harmful goods and services, and the right to be protected from unfair trade practises.

In March 2019, the ASCI's Consumer Complaints Council in Mumbai assessed 344 advertising and upheld complaints against 229 misleading advertisements.

In this context, the Advertising Standards Council of India (ASCI) has also released guidelines.

Additionally, certain legislation, such as the Drugs and Cosmetics Act of 1940 and the Drugs and Magic Remedies (Objectionable Advertisements) Act of 1955, seek to regulate such advertisements. However, there are industry-specific regulations that govern deceptive advertising relating to certain items or services covered by such laws.

Tata Motors was recently fined Rs. 1,50,000 by the National Consumer Dispute Redressal Commission for deceiving a consumer with deceptive advertising.

Although the old Consumer Protection Act may have regulated misleading marketing, the law lacked clear provisions to do so since it had to be viewed as a type of unfair trade activity. Despite various regulations designed to safeguard customers from unfair trade practises, consumers continue to be exploited by deceptive and misleading marketing. 11 As a result, it was felt that the modified law should address all of these problems, particularly by criminalising some of the connected issues.

CONCLUSION:

Although the Consumer Protection Act of 2019 is a positive step forward, it still falls short on several fronts. The Act envisions the executive interfering in the appointment of commission members, which could violate the principle of separation of powers because the Government will be in charge of appointing members to various commissions. As a result, the constitutionality of some provisions may be challenged in the courts in the future.

Consumer Protection Councils will be established and will provide advisory services, but it is unclear to whom these councils will provide recommendations. The minister in charge of the ministry responsible for consumer affairs will lead the central council and state councils.

In conclusion, we can say that consumer rights in India have begun to gain a lot of traction, which has resulted in increased liability and obligation on the part of businesses. As a result, it necessitates consumer knowledge because only those who are aware of the requirements are able to exercise their rights.

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