



ANALYTICAL STUDY OF E-COMMERCE AND CONSUMER PROTECTION LAWS IN INDIA

Priyanka Maheshbhai Chokshi¹, Dr. Uday Deshpande²

¹ Research Scholar, Monark University

² Research Supervisor, Dean, Dept. of Law, Faculty of Law, Monark University

ABSTRACT

Through this doctrinal study, the researcher wants to help the Indian citizens to focus on certain important aspects of Consumer Protection simply. The researcher has used the secondary sources available on this topic online, books, journals etc. What is Consumer Protection? How it is useful? Are there any rights available to the consumers? How can they get a remedy through the Act? What are the utility and features of the Act? What is Product Liability? What is CCPA? What are a consumer's responsibilities and liabilities? What is 'service'? What is a contract of service and a contract for service? What is the Consumer Dispute Redressal Commission?

KEYWORDS: Consumer Protection Act 2019, Consumer Protection in India, Service, Advocates Service

INTRODUCTION

The Consumer Protection Act became operative in 1986. Customer issues are handled swiftly and simply by it. Customers are encouraged and protected to voice their complaints about flaws and shortcomings in goods and services. The primary objective of this forum is to support producers and consumers and settle legal disputes.

All services and products provided by the public, private, and cooperative sectors are covered under the Consumer Protection Act of 1986, except for those that are exempt from it by the federal government. The statute provides a place for customers to voice their grievances, following which the forum initiates legal action against the supplier that is at fault.¹

Consumer Protection Act, 2019: An Overview

- The bill was introduced in Lok Sabha by Minister of Consumer Affairs, Food & Public Distribution, **Mr. Ram Vilas Paswan** on **8th July, 2019**.
- The Parliament passed the bill on 6th August, 2019 to replace the 1986 Act.
- The President of India gave its assent on **9th August, 2019**.

Main features of Consumer Protection Act 2019

While retaining certain old provisions, the New Act has certain new provisions that tightens the existing rules to further safeguard consumer rights and create exhaustive consumer protection law. New provisions under Consumer Protection Act 2019

- Inclusion of E-commerce, Direct selling Establishment of Central Consumer Protection Authority (CCPA)
- Strict Norms for Misleading Advertisement
- Strict Norms for product liability
- Changes in the Pecuniary Jurisdiction
- Greater ease to dispute resolution Addition in the clause of

"Unfair Trade Practice"

- Unfair Contract
- Alternate Dispute Resolution through mediation

Background

The Consumer Protection Act was passed in **1986**, and it came into force on **1st July 1987**. The main objectives of the Act were to provide better and **all-round protection** to consumers and effective **safeguards** against different types of **exploitation** such as **defective goods**, **deficient services** and **unfair trade practices**. Consumer Protection Act, 2019 is a law to **protect the interests** of the consumers.

This Act is enacted to resolve many pending consumer complaints in consumer courts across the country. It has ways and means to solve consumer grievances speedily. This Act aimed at getting accurate information on the **Quality, Quantity, Purity, Price** and **Standard of the Products**.

Over the past 20 years, the Indian consumer industry has experienced a significant transformation with the introduction of digital technologies, and swift adoption of e-commerce, cloud computing and smartphones. The CPA, or the Consumer Protection Act, 1986 serving as the leading legislative defending consumer rights had grown outdated and did not cover the quick changes in the consumer markets, particularly those that deal with with teleshopping, internet, and dangerous contracts, product recalls, and deceptive marketing. Consequently, the idea was to substitute it for another with the Act of 2019 for Consumers Protection.

Objects

1. To Provide better and all-round protection to consumers.
2. To Provide machinery for the speedy redressal of grievances.
3. To Create a framework for consumers to seek redressal.

4. To Provide rights to consumers.
5. To Safeguard the rights of Consumers.

Definitions-

Consumer - Section 2(7)

“consumer” means any person who -

1. **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 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; or
2. **hires or avails** of any **service** 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 beneficiary of such service other than the person who hires or avails of the services for 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 service for any **commercial purpose**.

Explanation. — For this clause, — (a) the expression “commercial purpose” does not include the use by a person of goods bought and used by him exclusively to earn his livelihood, using self-employment; (b) the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

Consumer Rights- section 2(9)-

“Consumer rights” includes, —

1. the right to be protected against the marketing of goods, products, or
2. the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, to protect the consumer against unfair trade practices.
3. the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices.
4. the right to seek redressal against unfair trade practices or restrictive trade practices or dishonest exploitation of consumers; and
5. the right to consumer **awareness**.
6. Right to **Safety**- Before buying, a consumer can examine the quality and guarantee of the goods and opt for ISI or AGMARK products.
7. Right to **Choose**- Consumers must have the right to choose from a variety and number of goods at a competitive price.
8. Right to be **informed**- The buyers must be provided with complete information with all the necessary and adequate details of the product, make her/him act wise, and change the buying decision.

9. Right to Consumer **Education**- The consumer must be aware of his/her rights and avoid exploitation.
10. Right to be **heard**- The consumer will get due attention to express their grievances at a suitable platform.
11. Right to seek compensation- The consumer has the right to seek or ask for redressal against unfair and inhumane practices or exploitation of the consumer.

Consumer Responsibilities/Liabilities

1. Responsibility **to be aware** – A consumer has to be careful of the safety and quality of products and services before purchasing.
2. Responsibility **to think independently**– Consumers should be well bothered about what they want and need and hence make independent choices.
3. Responsibility **to speak out** The buyer should be fearless in speaking out their problems and tell traders what they exactly want
4. Responsibility **to complain**- It becomes the consumer’s responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.
5. Responsibility **to be an Ethical Consumer**- Consumer must be fair and not engage themselves with any deceptive practice.

On which products are these rights applicable?

This Protection Act covers entire goods and services of all sectors that are public, private, or cooperative sectors, except those exempted by the central government. The Act provides a floor for a consumer where one can file their complaint against the product and the forum takes action against the concerned supplier and compensation is granted to the consumer for the inconvenience, he/she has encountered.

Service - section 2(42) - “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but **does not include** the rendering of any service **free of charge** or under a contract of **personal service**.

The Supreme Court has decided that the Act’s definition of “service” does not apply to “services” that are hired or obtained from an advocate. For instance, since legal aid services are regarded as a “contract of personal service,” a complaint claiming a “deficiency in service” against the lawyer would not be enforceable under the Consumer Protection Act.

An arrangement wherein a person is employed to give their services is known as a contract of personal service. A contract for services, on the other hand, is an agreement between two parties to provide a service. A contract of service leaves numerous responsibilities on the other party, including how and when the other party pays the other party. The person is in charge of deciding how much to charge and how they will be

paid under a service contract.

The Supreme Court held that the Services rendered by an advocate would come under the “a contract of personal service” as opposed to a “contract for service”. In layman terms, ‘a contract of personal service’ relates to an arrangement where an individual is hired for rendering his/ her services. However, in the case of “contract for service” the services...³

Whether the Legislature ever intended for the professions or services provided by professionals to fall under the ambit of the CPA 1986, or whether a complaint alleging a “deficiency in service” against advocates practicing law would be maintainable under that legislation?

Supreme Court: In an appeal against the National Consumer Disputes Redressal Commission’s (NCDRC) impugned judgement, which held, among other things, that a complaint under the Consumer Protection Act of 1986 (CPA, 1986) would be maintainable if there was any deficiency in service rendered by the Advocates/Lawyers, the Division Bench of Bela Trivedi and Pankaj Mithal, JJ., while setting aside the NCDRC judgement, has held the following...

Advocates are not liable under the Consumer Protection Act for deficiencies in services provided by the Supreme Court.

The Legislature never intended to include professions, or the services provided by professionals within the purview of the Act of 1986/2019; rather, the CP Act 1986, as re-enacted in 2019, was created with the express purpose of protecting consumers from dubious business practices and unfair trade practices. The legal profession cannot be compared to any other profession since it is sui generis, or unique in nature. A service under “a contract of personal service” is one that is hired or utilised by an advocate, and as such, it would fall under the exclusionary portion of the definition of “**Service**” included in **Section 2 (42)** of the CP Act 2019. Under the CP Act of 2019, a complaint alleging a “**deficiency in service**” against advocates practicing law would not be viable.

Advocates are not liable under the Consumer Protection Act for deficiencies in services provided by the Supreme Court.⁴

Goods - Sec 2(21) - “goods” means every kind of movable property and includes “food” as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006.

The Grievance Redressal Machinery Provided Under Consumer Protection Act, 2019.

Consumer Disputes Redressal Commissions: The act has the provision of the establishment of the Consumer Disputes Redressal Commissions (CDRCs) at the **National, State and District** levels. The CDRCs will entertain complaints related to:-

1. Overcharging or deceptive charging
2. Unfair or restrictive trade practices
3. Sale of hazardous goods and services which may be hazardous to life.

4. Sale of defective goods or services

Pecuniary Jurisdiction as per the Consumer Protection rules, 2021 vide notification dated 30 December 2021

- The **National** CDRC will hear complaints worth more than **Rs. 2** crores.
- The **State** CDRC will hear complaints when the value is **more than Rs fifty lakhs but less than Rs 2 crore**. While the **District** CDRC will entertain complaints when the value of goods or services is up to **Rs fifty lakhs**.

Penalties for Misleading Advertisement –

- The CCPA may impose a penalty of up to 10 lakh Rupees & imprisonment for up to **2 years** for a false or misleading advertisement.
- In case of a subsequent offence, the fine may extend to **50 lakh** Rupees & imprisonment up to **5 years**.
- **CCPA** (Central Consumer Protection Authority) can also prohibit endorsers of misleading advertisements from endorsing that product or service for up to **1 year**.

A.- The District Commission - “District Commission” means a District Consumer Disputes Redressal Commission established under sub-section (1) of section 28.

Under the **Consumer Protection Act 2019**, which was enacted on **July 20**, the District Consumer Disputes Redressal Forum has now become the District Consumer Disputes Redressal Commission.

The change of the forum to a commission in the district will be more beneficial for consumers as it will **decrease** the caseload at the National Consumer Disputes Redressal Commission.

- **Composition of the District Commission** - Acts says the Commission will comprise of the President and at least two members, with a maximum to be prescribed by Rules. The Rules do not specify the maximum. At least one member must be a woman.
- **Qualification** -
1. be not less than **thirty-five** years of age; possess a **bachelor’s degree** from a recognised university; and be persons of ability, integrity and standing, and have adequate knowledge and experience of at least **15 years** in dealing with problems relating to **economics, law, commerce, accountancy, industry, public affairs or administration**.

Selection - The President is to be appointed by the state government in consultation with the Chief Justice of the High Court of the state. For other members, based on the recommendation of the Selection Committee consisting of a High Court Judge and Secretaries of the Ministries of Law and Consumer Affairs of the state government.

Term of Office: Four years or until 65 years of age, whichever is earlier. One-time re-appointment permitted.

Definitions: -

B.- The State Commission (sec- 2(44))

“State Commission” means a State Consumer Disputes Redressal Commission established under sub-section (1) of section 42.

• **Composition of the State Commission (Section 16)**

Composition: The Act says that the Commission will comprise a total **four members**, a President and at least four members, with a maximum to be prescribed by Rules. The Rules do not specify the maximum. However, it states that not more than **50%** of members can be from a judicial background and at least one member must be a woman.

Qualifications: The President must be a sitting or former High Court Judge. For other members, must be: (i) at least 40 years old, (ii) possess a bachelor’s degree, (iii) have special knowledge or experience of at least 20 years in certain fields such as economics, law and public affairs.

Selection: Based on the Selection Committee comprising of a High Court Judge (nominated by the Chief Justice of the High Court) and the Secretaries of the Ministries of Law and Consumer Affairs of the state government.

Term: Four years or until 65 years of age, whichever is earlier. One-time re-appointment permitted.

C.- The National Commission (sec-2(29))

“National Commission” means the National Consumer Disputes Redressal Commission established under sub-section (1) of section 53.

Composition: The Commission will comprise of four to 11 members. At least one member must be a woman.

Qualifications: President must be a sitting or former Supreme Court Judge or Chief Justice of a High Court. For other members, must be: (i) High Court Judge, or (ii) District Judge and Additional District Judge for ten years, or (iii) knowledge or experience of at least 25 years in certain fields such as economics, law and public affairs.

Selection: Based on Selection Committee comprising of a High Court Judge (nominated by the Chief Justice of the High Court) and the Secretaries of the Ministries of Law and Consumer Affairs of the state government.

Term: President: Five years or until 70 years of age, whichever is earlier; Other members: Five years or 67 years of age, whichever is earlier.

1.2.3 Resignation -

A member may resign his office in writing under his hand addressed (notice) to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

- **Process -**
- To give a legal notice to the respondent(s)
- To file the complaint – notarise the document
- Fees may be submitted through demand draft
- Four copies of the complaint to be filed

Section 69 - Limitation period - THE CONSUMER PROTECTION ACT, 2019. Limitation period. 69. (1) The District Commission, the State Commission 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.

Mediation –

The Act marks the very importance of mediation in consumer-related disputes under Chapter V of the Act, which in turn, encourages the parties to undergo mediation once the complaint has been admitted or at any other later stage. If the members of the Central Authority deem fit, and upon prior satisfaction, that there exists a scope of the settlement of the dispute, they may refer the same to mediation **within 5 days** and in the event of failure of mediation, the complaint shall proceed further.

The fee of the mediator shall not exceed Rs. 2000/- per case under any circumstances but as far as the production of witnesses is concerned, each party will have to bear such expenses including experts or be it for the production of documents. As per the latest Consumer Dispute Redressal Commission Rules, it has been very vividly laid down that there shall be no fee for the filing of cases under the Consumer Protection Act, 2019 **up to Rs. 5 Lakhs.**

Consumer Dispute Redressal Commission (CDRC)

Chapter IV of the Act deals with the Establishment, Qualifications, Jurisdiction, Manner of Complaint, Proceedings etc. regarding the Consumer Disputes Redressal Commission. CDRC is empowered to resolve complaints concerning unfair and restrictive trade practices, defective goods and services, overcharging and goods which are a hazard to life and safety. It has to be set up at three levels, i.e. the District, State and National levels (commissions). In comparison to the old Act, the jurisdictions of the commissions have been enhanced.

The Act proposes the establishment of the Central Consumer Protection Authority (CCPA) as a regulatory authority.

The CCPA will protect, promote and enforce the rights of consumers and regulate cases related to unfair trade practices, misleading advertisements, and violation of consumer rights.

CCPA would be given wide-ranging powers.

The CCPA will have the right to take Suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses, impose penalties and file class-action suits.

The CCPA will have an investigation wing to conduct independent inquiries or investigations into consumer law violations.

Available Reliefs to consumers

In case the concerned forum passes an order in favour of the aggrieved party, it can pass one or more of the following directions to the opposite party.

1. Repair the defective goods or remove the deficiency in the service.
2. Replacement of the defective good with a new one.
3. Refund the price paid by the consumer for the good or the service.
4. Payment of compensation in cash for the loss or injury suffered.
5. Payment of punitive damages.
6. Removal of misleading advertisement and issue of a correct advertisement.
7. Payment of an appropriate amount (not less than 5% of the good in question) to be credited to the Consumer Welfare Fund.
8. Ceasing the manufacturing of hazardous goods.

Related Rules and Regulations

- The Consumer Protection (E-Commerce) Rules, 2020 which are mandatory and are not advisories, lay down all the important information relating to the e-commerce entities keeping in mind both the consumer and the product/service provider. Key highlights are:
- E-commerce entities according to **Rule 5** are required to provide information to consumers, relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism, payment methods, security of payment methods, charge-back options and country of origin.

- These platforms will have to acknowledge the receipt of any consumer complaint within 48 hours and redress the complaint within **one month** from the date of receipt. They will also have to appoint a grievance officer for consumer grievance redressal.
- Sellers cannot refuse to take back goods withdraw services or refuse refunds if such goods or services are defective, deficient, delivered late, or if they do not meet the description on the platform.
- The rules also prohibit e-commerce companies from manipulating the price of goods or services to gain unreasonable profit through unjustified prices.
- As per the Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020 which came into force on 20th July 2020, the amount of fee payable for **filing the complaint in the District Commission up to Rs 5 lakhs has been made Nil according to Rule 7.**
- The credit of the amount due to unidentifiable consumers will go to the Consumer Welfare Fund (CWF).
- State Commissions will furnish information to the Central Government every quarter on vacancies, disposal, the pendency of cases and other matters.
- Apart from these general rules, there are Central Consumer Protection Council Rules, provided for the constitution of the Central Consumer Protection Council (CCPC).
- It will be an advisory body on consumer issues, headed by the Union Minister of Consumer Affairs, Food and Public Distribution with the Minister of State as Vice Chairperson and 34 other members from different fields.
- It will have a three-year tenure and will have a Minister-in-charge of consumer affairs from two States from each region: North, South, East, West, and North-East Region.

Comparison of Consumer Dispute Redressal Commission /Machinery

Points	District Commission	State Commission	National Commission
Meaning/ Definition	Under Section 28 (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission to be known as District Commission Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.	Under Section 42 (1) The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission to be known as the State Commission.	Under Section 53 (1) The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission.
Composition	Each District Commission shall consist of- (a) a President; and (b) at least two members and a maximum number of members as may be prescribed by rules (c) one of whom shall be a woman.	Each State Commission shall consist of- (a) a President; and (b) at least four members and a maximum number of members as may be prescribed by rules (c) one of whom shall be a woman.	The National Commission shall consist of- (a) a President; and (b) at least four and not more than eleven members (c) one of whom shall be a woman.
Qualification	- For President: District Judge. - For Members: (a) is of not less than thirty-five years of age. (b) possesses a bachelor's degree from a recognised University. (c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine engineering, technology, public health or medicine	- For President: High Court Judge - For Members: (a) he is of not less than forty years of age (b) an experience of at least ten years as presiding officer of a district court or of any tribunal at an equivalent level or combined service as such in the district court and tribunal: Provided that not more than fifty per cent of such members shall be appointed from legal background; or (c) a bachelor's degree from a recognised university and (d) is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine: (c) a bachelor's degree from a recognised university and (d) is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine:	- For President: Supreme Court Judge - For Members: (a) a person who has been or is a high court judge or district judge or additional district judge for 10 years. (b) a bachelor's degree from a recognised university and (c) is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine: economics, commerce, industry, finance, management, engineering, technology, public health or medicine:
Appointment of President and Members	Appointed by the State Government on the recommendation of a Selection Committee,	Same as the District Commission	Appointed by the Central Government on the recommendation of a Selection Committee,

Terms of office	The president and every member shall hold office for a term of four years or up to the age of sixty-five years, whichever is earlier.	The president and every member shall hold office for a term of four years or up to the age of sixty-five years, whichever is earlier.	The president shall hold office for a term of five years or up to the age of 70 years, whichever is earlier. - Member shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier.
Pecuniary Jurisdiction	To entertain complaints where the value of goods and services paid as consideration does not exceed Rs. 50 lakhs .	To entertain complaints where the value of goods and services paid as consideration exceeds Rs. 50 lakhs but does not exceed Rs. 2 Crores .	To entertain complaints where the value of goods and services paid as consideration exceeds Rs. 2 Crores .
Territorial Jurisdiction	A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or (c) the cause of action, wholly or in part, arises; or (d) the complainant resides or personally works for gain		
Appeal	Any person aggrieved by the order of the District Commission can appeal against the judgment in the State Commission within 45 days .	Any person aggrieved by the order of the State Commission can appeal against the judgment in the National Commission within 30 days by depositing 50% of the fine money.	Any person aggrieved by the order of the National Commission can appeal against the judgment in the Supreme Court within 30 days by depositing 50% of the fine money. ⁴

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FOOTER NOTES

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