

A Bird Eye View on Judicial Activism on Consumer Protection Act 2019- Recent Trends

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Abstract

This paper highlights the judicial activism of Consumer Protection Act 2019 and recent trends and leading cases on consumer disputes. The Consumer Protection Act (2019) marks a significant advancement in safeguarding consumer rights and interests in India. Enacted to replace the earlier Consumer Protection Act of 1986, this legislation aims to enhance consumer empowerment, protection against unfair trade practices, and timely resolution of consumer disputes. The Consumer Protection Act (2019) aims to create a robust framework for consumer protection in India, addressing modern challenges like e-commerce and ensuring that consumers have effective avenues for seeking redressal of grievances. It represents a significant step towards empowering consumers and ensuring fair and equitable treatment in the marketplace. the Consumer Protection Act (2019) is expected to play a pivotal role in safeguarding consumer interests, promoting fair business practices, and fostering a more equitable marketplace in India. Its proactive enforcement and evolution in response to changing dynamics will be crucial in shaping a consumer-friendly environment in the years to come.

Keywords: Consumer Protection Act 2019, Judicial Activism, Consumer Disputes

Introduction

In India, protection of consumer rights is primarily governed by the Consumer Protection Act, 2019 (Consumer Protection Act), and the rules and regulations made there under. Some of the rules and regulations made under the Consumer Protection Act include Consumer Protection (E-Commerce) Rules, 2020, Consumer Protection (Mediation) Regulations, 2020, the Consumer Protection (Consumer Dispute Redressal Commissions) Rules, 2020 and the Consumer Protection (General) Rules, 2020. Other than the Consumer Protection Act, there are various other laws and regulations which have been enacted with respect to protection of consumer interests covering specific subject matters such as food, drugs and cosmetics.

History of Legal Consumer Protection

The history of consumer protection in India can be traced through several key legislative milestones:

1. **Monopolies and Restrictive Trade Practices Act (1969):** This was one of the earliest legislative efforts in India to protect consumers against monopolistic and restrictive trade practices. It aimed to ensure fair competition in the market.
2. **Consumer Protection Act (1986):** This landmark legislation replaced the archaic and inadequate provisions of the MRTP Act in terms of consumer protection. The Consumer Protection Act (CPA) of 1986 was enacted to provide better protection of consumers' interests. It established consumer forums at the district, state, and national levels to adjudicate consumer disputes swiftly and efficiently. This Act recognized six rights of consumers: right to safety, right to be informed, right to choose, right to be heard, right to seek redressal, and right to consumer education.
3. **Amendments and Strengthening:** Over the years, the CPA of 1986 underwent amendments to address emerging issues and challenges in consumer protection. These amendments aimed to streamline processes, enhance penalties for unfair trade practices, and expand the scope of consumer rights in line with global best practices.
4. **Consumer Protection Act (2019):** The latest iteration, the Consumer Protection Act of 2019, represents a significant overhaul of the consumer protection framework in India. It was enacted to address contemporary issues such as e-commerce, direct selling, and misleading advertisements more effectively. The CPA 2019 strengthens consumer rights, establishes the Central Consumer Protection Authority (CCPA) for better enforcement, introduces provisions for product liability, and enhances penalties for violations of consumer rights.

Throughout its evolution, the legislative landscape of consumer protection in India has aimed to empower consumers, provide effective mechanisms for redressal of grievances, and ensure fair practices in the marketplace. These efforts reflect India's commitment to safeguarding consumer interests amidst evolving economic and technological landscapes.

The Consumer Protection Act (CPA) of 2019

The Consumer Protection Act (CPA) of 2019 in India is a comprehensive legislation aimed at protecting the interests of consumers by establishing authorities, procedures for redressal of grievances, and mechanisms for enforcement. Here's an introduction to its key features:

1. **Objective:** The CPA 2019 replaces the earlier Consumer Protection Act of 1986, aiming to modernize consumer rights in line with current practices and challenges, including e-commerce and digital transactions.
2. **Rights of Consumers:** The Act defines consumer rights more clearly, including the right to protection against marketing of goods and services that are hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard, and price of goods or services, and the right to be heard and redressal in case of consumer disputes.
3. **Consumer Disputes Redressal Mechanism:** It introduces several layers of consumer forums at the district, state, and national levels for speedy resolution of consumer disputes. These forums are designed to handle complaints related to defective goods, deficient services, unfair trade practices, and misleading advertisements.
4. **Central Consumer Protection Authority (CCPA):** The Act establishes the CCPA to promote, protect, and enforce consumer rights as a regulatory authority. It has powers to investigate, recall unsafe goods, impose penalties, and even initiate class action suits on behalf of consumers.
5. **Product Liability:** Manufacturers, sellers, or service providers can be held liable for any harm caused to consumers due to defective goods or deficient services. The Act introduces provisions for filing claims for compensation for injuries or damages caused by such products or services.
6. **Consumer Awareness and Education:** The CPA 2019 emphasizes the importance of consumer education and awareness programs to empower consumers with knowledge of their rights and responsibilities.

7. **E-commerce and Digital Transactions:** The Act includes provisions specifically addressing e-commerce transactions, ensuring accountability and consumer protection in online purchases.
8. **Penalties and Compensation:** It introduces stringent penalties for misleading advertisements and unfair trade practices. It also provides for enhanced compensation to consumers in case of injury or loss due to negligence of manufacturers or service providers.

Overall, the Consumer Protection Act 2019 aims to strengthen consumer rights and protection mechanisms in India, ensuring a fair marketplace where consumers can confidently engage in transactions while being safeguarded against exploitation and unfair practices.

Procedure for making an appeal

Any consumer who is aggrieved by the order of a commission can make an appeal before the higher commission subject to the timelines prescribed in the Consumer Protection Act. An appeal against the order of district commission can be made before the state commission on grounds of facts or law within a period of forty-five (45) days from the date of the order. Similarly, an appeal against the order of state commission can be made before the national commission within a period of thirty (30) days from the date of such order. The national commission shall also be the competent forum for an appeal against the order of the central authority established under the Consumer Protection Act and such an appeal should be made within thirty (30) days from the date of receipt of such order. An appeal before the state or national commission shall be heard and disposed within a period of ninety (90) days from the date of admission. An appeal against the order passed by the national commission shall be made before the Supreme Court of India within a period of thirty (30) days from the date of the order.

Consumer Protection Councils

Consumer Protection Councils (CPCs) are an integral part of the consumer protection framework in India, established under the Consumer Protection Act (CPA) of 1986. These councils play a crucial role in promoting and protecting consumer rights at various levels. Here's a composition overview of Consumer Protection Councils in India:

1. District Consumer Protection Council (DCPC):

- i. **Chairperson:** The District Magistrate of the district concerned.
- ii. **Members:**
 - a. **Officials:** Officials from various government departments and local authorities, such as the Health Department, Food and Civil Supplies Department, and Urban Development Authority.
 - b. **Non-Government Members:** Representatives of consumer organizations, local traders, and industries.

2. State Consumer Protection Council (SCPC):

- i. **Chairperson:** Chief Minister of the State (or Lieutenant Governor in Union Territories).
- ii. **Members:**
 - a. **Officials:** Ministers of concerned departments, such as Finance, Food and Civil Supplies, Industries, Health, and Law.
 - b. **Non-Government Members:** Representatives of consumer organizations, industry associations, and trade unions.

3. Central Consumer Protection Council (CCPC):

- i. **Chairperson:** The Minister of Consumer Affairs, Food and Public Distribution.
- ii. **Members:**
 - a. **Officials:** Secretaries of various central government departments, such as Agriculture, Commerce, Industry, and Finance.
 - b. **Non-Government Members:** Representatives of consumer organizations, industry associations, and experts in consumer affairs.

Functions of Consumer Protection Councils:

- i. **Advisory Role:** They advise on matters relating to promotion and protection of consumer rights.
- ii. **Awareness Generation:** They promote consumer awareness through campaigns, workshops, and seminars.

- iii. **Monitoring:** They monitor the functioning of consumer fora (Consumer Disputes Redressal Agencies) in their respective jurisdictions.
- iv. **Policy Recommendations:** They make recommendations for effective implementation of consumer protection laws and policies.

Consumer Protection Councils act as vital bodies in ensuring that consumer rights are upheld and protected at local, state, and national levels in India. Their composition ensures representation from government officials and diverse stakeholders, fostering collaboration towards consumer welfare and fair market practices. The Act mandates establishment of Consumer Protection Councils at the Centre as well as in each State and District, with a view to promoting consumer awareness. The Central Council is headed by Minister In-charge of the Department of Consumer Affairs in the Central Government and the State Councils by the Minister In-charge of the Consumer Affairs in the State Governments. It also provides for a 3-tier structure of the National Commission, the State Commissions and the District Commissions for speedy resolution of consumer disputes.

To provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies have been set up in each District and State and at the National level, called the District Consumer Disputes Redressal Commissions, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively. At present, there are 678 District Commissions and 35 State Commissions with the National Consumer Disputes Redressal Commission (NCDRC) at the apex level. The NCDRC has its office at Upbhokta Naya Bhawan, 'F' Block, GPO Complex, INA, New Delhi-110 023.

Each District Commission is headed by a person who is or has been or is eligible to be appointed as a District Judge and each State Commission is headed by a person who is or has been a Judge of a High Court. The National Consumer Disputes Redressal Commission was constituted in the year 1988. It is headed by a sitting or a retired Judge of the Hon'ble Supreme Court of India or a sitting or a retired Chief Justice of an Hon'ble High Court, in terms of Rule 3(12)(a) of the Tribunal(Conditions of Service) Rules, 2021. The National Commission is presently headed by Hon'ble Mr. Justice Amreshwar Pratap Sahi, former Chief Justice of Patna and Madras High Courts as President and has nine Members, viz. Hon'ble Mr. Justice Ram Surat Ram Maurya, Hon'ble Mr. Subhash Chandra, Hon'ble Mr. Justice Karuna Nand Bajpayee, Hon'ble Mr. Binoy Kumar, Hon'ble Mr. Justice Sudip

Ahluwalia, Hon'ble Dr. Inder Jit Singh, Hon'ble AVM J. Rajendra, AVSM VSM (Retd.), Hon'ble Mr. Bharatkumar Pandya & Hon'ble Dr. Sadhna Shanker.

The provisions of this Act cover 'goods' as well as 'services'. The goods are those which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are in the nature of transport, telephone, electricity, housing, banking, insurance, medical treatment, etc.

Procedure to file complaint

A written complaint, can be filed before the District Consumer Commission for pecuniary value of upto Rupees Fifty Lakh; State Commission for the value from Rupees Fifty Lakh One upto Rupees Two Crore and the National Commission for value above Rupees Two Crore, in respect of defects in goods and deficiency in service. The service can be of any description and the illustrations given above are only indicative. However, no complaint can be filed for alleged deficiency in any service that is rendered free of charge or under a contract of personal service. The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit. In the complaint/appeal/petition submitted under the Act, a consumer is not required to pay any court fees but only a nominal fee. Consumer Commission proceedings are summary in nature. The endeavor is made to grant relief to the aggrieved consumer as quickly as in the quickest possible time, keeping in mind the provisions of the Act which lay down time schedule for disposal of cases. If a consumer is not satisfied by the decision of a District Commission, he can appeal to the State Commission. Against the order of the State Commission a consumer can come to the National Commission.

Powers of National Commission

In order to help achieve the objects of the Consumer Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pendency of cases. The National Commission is empowered to issue instructions regarding:

- (1) Adoption of uniform procedure in the hearing of the matters,
- (2) Prior service of copies of documents produced by one party to the opposite parties,
- (3) Speedy grant of copies of documents, &

(4) Generally over-seeing the functioning of the State Commissions and the District Commissions to ensure that the objects and purposes of the Act are best served, without interfering with their quasi-judicial freedom. Every matter filed with the Registry is listed within 21 days of its filing for admission before the National Commission. Functioning of District Commission, State Commission and National Commission is consumer friendly; thus, a consumer can file a complaint and also address arguments in person. In genuine cases where the complainant/ appellant/ petitioner before the National Commission is unable to engage the services of an advocate, legal aid is provided by the Commission free of charge.

Pending cases

Consumer cases are to be decided summarily in 90 to 150 days as per consumer law. But cases are dragged for several years in district consumer courts, several years in state consumer commissions and several more years in national consumer commissions. The pendency in the consumer commissions shows a declining trend. Number of cases pending in consumer commission comes down from 5.55 lakhs in December 2022 to 5.45 lakhs in September 2023. Vacancies at these bodies could be one of the reasons for the increasing pendency of consumer cases in the country. Technical and procedural issues, coupled with inadequate benches at district levels, seem to have added to the delay in grievance redressal.

Recent cases on Consumer Disputes

1. *Ireo Grace Realtech Pvt. Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019 (Supreme Court)*

Bench -Dr Dhananjaya, Y Chandrachud, Indu Malhotra, Indira Banerjee

Decided on –January 11, 2021

Ref. Pioneer Urban Land and Infrastructure Ltd Vs Govindan Raghavan

SC held-“We are of the view that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer’s Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer’s Agreement.”

2. *Narinder Chopra V/S Jaiprakash Associates (NC)*

Consumer Complaint No 3258 Of 2017 along with IA 330 of 2021&IA 1130 of 2021

Decided On 16.5.2021

Law point: Whether pending matters are to be transferred to appropriate commission after enhancement of pecuniary jurisdiction.

NC held-There is no provision for transfer of pending cases in the new Act of 2019' The transitional provisions contained in Sections 31, 45 and 56 expressly indicate that the adjudicatory personnel who were functioning as Members of the District Commission, SCDRC and NCDRC under the erstwhile legislation shall continue to hold office under the new legislation. Previous decisions of the NCDRC which had interpreted after amendments 2002, that enhanced pecuniary jurisdiction, with prospective effect. Ref. Cases Southfield Paints and Chemicals Pvt. Ltd. v. New India Assurance Co. Ltd. & Premier Automobiles Ltd. v. Dr Manoj Ramachandran, where the NCDRC held that the amendments enhancing the pecuniary jurisdiction are prospective in nature.

3. *M/s Daddy's Builders Pvt. Ltd. & Another Vs Manisha Bhargava and Another*

(Petition for Special Leave to Appeal (Civil) No. 1240 of 2021)

Decided on February 11, 2021. Supreme Court of India

SC held- Written statement by opposite party to complaint within 30 days or such extended period, not exceeding 15 days, should be read as mandatory. Commencing point of limitation of 30 days, under the aforesaid provisions, would be from the date of receipt of notice accompanied by a copy of the complaint, and not merely receipt of the notice

4. *Honda Cars India Limited Vs Sudesh Berry CIVIL APPEAL NO.6802 OF 2021 (Arising out of SLP (C) No.11986/2020) SC Decided on 12 November, 2021*

SC held If there be any deficiency in service by the dealer or the authorised centre in rendering assistance for repairs of the vehicle, the manufacturer of the vehicle cannot be held liable.

5. *TATA Motors Ltd Vs Antonio Paulo Vaz & Another, 2021 SCC Online SC 125*

SC held

Manufacturer and dealer have principal to principal relation and not of principal to agent. Manufacturer not held liable for the wrongs of dealer.

6. Manohar Infrastructure and Constructions Private Ltd Vs Sanjeev Kumar Sharma & Ors.;
Citation: LL 2021 SC 714] Decided on December 2021

SC held NC has discretionary power vested with it to impose any condition while giving stay and rightly ordered to pay entire amount as determined amount by State Commission This condition has to do nothing with mandatory requirement of depositing 50 per cent of determined amount by State Commission.

7. *M/s Sheth M L Vaduwala Eye Hospital Vs Oriental Insurance Company Limited and Others SC Judgment by J. Dr Dhananjaya Y Chandrachud, J. Dt 11 Dec 2021*

SC held an insurance policy taken by doctors for professional indemnity can't be used to make insurance companies pay the liability of compensation to patients on behalf of the hospital which is not insured.

8. *M/S. Newtech Promoters And Developers Pvt. Ltd Vs State Of Up & Ors. Civil Appeal No(S). 6753 Of 2021 (Arising Out Of SLP(Civil) No(S). 3426 Of 2021) SC Judgment Dt 11 Nov 2021*

SC held To ensure greater accountability towards consumers and in view of the objective of the act, ongoing projects are also brought under the provisions of the act hence retroactive application of RERA Act confirmed. Section 18 confers right upon an allottee to get refund of the amount deposited with the promoter with interest if the promoter fails to give possession by the date specific. Single member of the authority under Section 81 of the Act authorised to order for refund and under Sec 40 can provide for collection of funds as revenue.

9. *Union Bank of India v/s Rajasthan Real Estate Regulatory High Court of Judicature for Rajasthan Bench at Jaipur D.B. Civil Writ Petition No. 13688/2021 Bench: Akil Kureshi, Uma Shanker Vyas Decided on 14.12.2021*

H.C of Rajasthan held that pursuant to taking possession of the project, the bank enters into the shoes of the promoter and becomes the assignee of the promoter and thus,

amenable to jurisdiction of RERA. The RERA would prevail over 'SARFAESI Act 'The rights of the real estate allottees cannot be compromised for the legal rights of Bank.

Conclusion

The Consumer Protection Act empowers consumers by ensuring their rights are protected and providing avenues for redressal. This legislation holds businesses accountable for their products and services, promoting fair trade practices. It promotes fairness in consumer transactions, ensuring consumers are treated justly and equitably. The Act emphasizes transparency, requiring businesses to provide clear and accurate information to consumers. Ultimately, the Consumer Protection Act aims to uphold justice by resolving disputes fairly and efficiently. These words highlight the goals and benefits of the Consumer Protection Act in safeguarding consumer rights and promoting a balanced marketplace.

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