

“Consumer Interest and Abuse of Dominant Position”

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INTRODUCTION

Consumer laws were created so that products and services provided by competitors were made fairly to consumer. Consumers are normally seen as ‘acting in the course of a business’ or are ‘dealing as customers’. Consumer laws are also known as consumer protection laws, are incorporated into the law to prevent deceitful activities, or unfair business practices. These laws to an extent serve as protection for weaker parties, often not able to handle these matters themselves. The legislation regarding consumer protection, comes from the governments in order to function as a safeguard to protect consumers. In this regard, the laws may require a specific business to provide information regarding their products or services, especially in industries, where public and personal safety or health is concerned, like the food industry.

But firstly, what do we exactly mean by the term consumer?

A “consumer” is a person, who obtains products or services, in order use it, or own it, instead of purchasing it in order to resell, or use it as a part or ingredient to manufacture other products, goods or services.

The concept of consumer protection comes from the belief in another concept; that of consumer a right, which is the belief that consumers have a wide variety of rights, regarding the products and services they consume. To this end a variety of organizations have been founded, in order to assist consumers in getting informed, and be able to make intelligent choices based on this information.

Besides consumer laws, efforts to advocate competition between organizations in the area of consumer protection, can also serve to further curate the interests of consumers.

The area of consumer laws, are part of the private law legislation, that regulate the relations between consumers and producers and businesses, that market their products and services, The consumer protection law, covers a broad scope of subjects, among them the right to privacy for consumers, in order to restrict marketing efforts to a point that it would fall under harassment and liability, in order to force manufacturers, to uphold a certain quality of their products and services. The laws also protect consumers against unethical business practices, and a wide variety of other topics involving consumer to producer activity.

ABUSE OF CONSUMERS BY THE DOMINANT POWER

Ideally, a market economy where firms compete to sell goods and services to the consumers should serve the interests of consumers better. Far from being a sovereign the consumer is a child who is too weak to resist or challenge the suppliers of goods and services. Consumers are largely denied their due rights, especially in developing countries such as India. The consumers are spread widely all over a country and are poor, illiterate and are generally not aware of their rights, though their awareness has recently increased. The manufacturers and suppliers of goods or services often exploit consumers by adopting a number of unfair and restrictive trade practices. They often merge and also form tacit cartels to raise prices for maximizing their profits at the expense of consumers.

For instance, in case of drugs manufacturers generally charge high prices which are much above their cost of production. Some pharmaceutical companies misuse their patent rights to exploit consumers. They therefore need protection from unfair and restrictive trade practices of producers and suppliers of goods or services.

Misleading advertising is another means by which the producers deceive the consumers. Advertisement is of two types. One is informative advertisement which informs the consumers about the availability of certain products at certain prices. This is not objectionable as it provides information to the consumers.

However, more often the purpose of advertisement by the manufacturers and suppliers is to mislead the ill-informed consumers about the quality and contents of their products and services. They indulge in what is called persuasive advertisement to compete away customers from their rivals. Such persuasive advertisements serve no useful social purpose and lead to deception of consumers.

The cost of advertisement is added to the cost of production and this leads to very high prices being charged from the consumers. The Indian readers know well that Crores of rupees are spent on film actors and cricket players as brand ambassadors and on advertisements on print and electronic media to promote the sale of their products.

From whom such heavy costs incurred on advertising are recovered?

Such heavy advertising expenditures just enable the manufacturers at the most to maintain their market shares of the product without adding much to its total output. The consumers need protection from such deception of persuasive advertisements. The government should not allow such heavy advertising cost to be incurred as valid cost for calculation of taxable profits of the firms.

The other and highly injurious practice by the suppliers, especially in India, is widespread practice of adulteration of commodities. The adulteration by private sector can take place right from the manufacturing point to the ultimate supplier of the products to the consumers.

Emergence of Consumer Protection Act, 2019

The Digital Age has heralded in a new era of commerce and digital branding, as well as a new set of customer expectations. Digitisation has provided easy access, a large variety of choice, convenient payment mechanisms, improved services and shopping as per convenience. However, along the growth path it also imported in challenges related to consumer protection.

Due to all this challenges the Indian Parliament, on 6 August 2019, passed the landmark Consumer Protection Bill, 2019 which aims to provide the timely and effective administration and settlement of consumer disputes. The Consumer Protection Act, 2019 received the assent of the President of India and was published in the official gazette on 9 August 2019.

The New Act seeks to replace the more than 3 decades old Consumer Protection Act, 1986.

Some of the Key Highlights of the New Consumer Protection Act, 2019:-

- ❖ ***It covers E-Commerce Transactions:*** The New Act has broadened the definition of 'consumer'. The definition now includes any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by this act.
- ❖ ***Establishment of Central Consumer Protection Authority:*** The New Act proposes the establishment of a regulatory authority known as the Central Consumer Protection Authority (CCPA), with high powers of enforcement. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations.
- ❖ ***Enhancement of Pecuniary Jurisdiction:*** New pecuniary limits have been fixed under the New Act. Accordingly, the district forum can now entertain consumer complaints where the value of goods or services paid does not exceed INR 10,000,000. The State Commission can entertain disputes where such value exceeds INR 10,000,000 but does not exceed INR 100,000,000, and the National Commission can exercise jurisdiction where the value exceeds INR 100,000,000.
- ❖ ***E-Filing of Complaints:*** This new act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. This is unlike the current practice of filing it at the place of purchase or where the seller has its registered office address. The New Act also contains

enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. This is aimed to provide procedural ease and reduce inconvenience and harassment for the consumers.

- ❖ ***Unfair Trade Practices:*** The New Act introduced a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.
- ❖ ***Provision for Alternate Dispute Resolution:*** It provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.

SOME ACTS THAT WERE ENACTED BEFORE THE CONSUMER PROTECTION ACT 2019

➤ **The Consumer Protection Act, 1986 (COPRA):-**

It is made for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and for matters connected there with it.

This statute is regarded as the 'Magna Carta' in the field of consumer protection for checking unfair trade practices, 'defects in goods' and 'deficiencies in services' as far as India is concerned. It has led to the establishment of a widespread network of consumer forums and appellate courts all over India. It has significantly impacted how businesses approach consumer complaints and has empowered consumers to a great extent.

Consumer Rights mentioned under Consumer Protection Act 1986:

1. The Right to be heard:

The consumer has the right to be heard if he has any complaint or grievance regarding the good or service received. This implies that consumers' complaints and grievances must receive due attention and consideration at an appropriate forum.

2. The Right to safety:

The consumers are entitled to protection of their health and safety from the goods and services they buy. They should not be supplied goods or services which are hazardous to their health and safety.

3. The Right against exploitation:

This covers right to protection from unfair trade practices and unscrupulous exploitation of consumers by charging excessive prices by suppliers of goods or services.

4. The Right to be informed:

This implies that consumers should be given correct and full information about the quality of goods that they buy. They should be provided information about the ingredients of the product, freshness of the product, any side effects that may occur as a result of consumption of a commodity. This right applies especially to the drug manufacturers and suppliers.

5. The Right to choose:

This implies that consumers should be provided a variety of products from which they can make a choice of their liking. The opportunity to choose from limited options restricts their right to choose.

6. The Right to get redressal:

This implies that consumers' complaints and grievances about the products and services supplied to them must be redressed. That is, they should not only be heard but their complaints must be redressed and compensated adequately.

7. The right to consumer education:

The right makes sure that the consumers in the country have informational programs and materials which are easily accessible and would enable them to make purchasing decisions which are better than before. Consumer education might refer to formal education through college and school curriculums as well as consumer awareness campaigns being run by non-governmental and governmental agencies both.

Jurisdiction of District Forum

1. Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty Lakhs.
2. A complaint shall be instituted in a District Forum 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, actually and voluntarily resides or carries on business or has a branch office or personally works for gain
 - 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 either the permission of the District Forum is given, or the opposite parties who do not reside, or

carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution.

c) The cause of action, wholly or in part, arises.

Consumer courts do not have jurisdiction over matters where services or goods were bought for a commercial purpose.

Jurisdiction of State Commission

Subject to the other provisions of this Act, the State Commission shall have jurisdiction:-

a) To entertain complaints:-

i) Where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty Lakhs but does not exceed rupees one Crore

ii) Appeals against the orders of any District Forum within the State

b) To call for the records and pass appropriate orders in any consumer dispute

Jurisdiction of National Commission

(a) To entertain complaints:-

(i) Where the value of the goods or services and compensation, if any, claimed exceeds rupees one Crore

(ii) Appeals against the orders of any State mayor

(b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission. However, the Supreme Court of India has held that the jurisdiction of National Commission under Revision Jurisdiction is very limited and can only be exercised when State Commission exceeds its jurisdiction, fails to exercise its jurisdiction or there is material illegality in the order passed by State Commission.

➤ **Trades Description Act 1968**

Any seller who gives a false trade description of goods or suppliers or offers to supply goods, which are wrongly described, is guilty of an offence.

This includes the following:

- Selling goods that are wrongly described by the manufacturer.
- Implied descriptions- a picture or illustration, which is seen to give the false impression.
- Quality, size, composition and method of manufacturer e.g. this Act could fall in place if a packaging of goods does not display the weight and must be accurate.

➤ **Unsolicited Goods & Services Act 1971**

This act protects consumers by inertia selling. Consumers did not have to pay for goods that they did not order, but had not bothered to return.

Consumers may keep the product after a certain number of days if the company who sent it to you does not pick up the product.

Example- a sales man called at my door, he sold me kitchen equipment, but did not provide me with a contract or receipt, under this act I have now the right to cancel the contract in anytime, until a copy of the copy of the contract or receipt is provided.

➤ **Consumer Credit Act 1974**

This act protects consumers as it lays down the regulations of purchase on credit for goods.

The intention of this act is to prevent consumers signing to unfair contracts. And also to ensure that purchases know how much interest rates are going to be charged for the credit that they receive.

➤ **Competition Act 1980**

This act protects consumers against the monopoly legislation as it prevents firms controlling more than 25% of the market without investigation.

The complaint is usually seen to go to the office of fair-trading (OFT), which then can decide on the investigation further.

Example- Yorkshire water, as this is a monopoly because there is only one water company in Yorkshire therefore can charge any price it wants to. Now this act is in place it controls firms controlling the market of more than 25%.

➤ **Weights & Measures Act 1990**

This legislation protects consumers as making it illegal to sell goods below their actual weight or volume, which must be stated on the packet or bottle.

This act allows the metric measures to be used, as this procedure was enforced through the trading standards office & the office of fair trading.

Example- a customer purchased a bottle of coke from a local shop, he noticed that there was no volume of the weight on the bottle, the customer could sue the company against the weights & measures act as it is illegal for company for not to specify the weight or volume of a product.

➤ **Food & Safety Act 1990**

This legislation protects consumers mainly in the food sector by making it an offence for farmers and growers to sell food, which is not of the nature or substance or quality demanded by the public.

Example- Foods past their expiry date etc.

An example of this act in a situation would be, a woman bought some bananas, and after she had eaten them she felt a bit sick the cause was that the product had past the expiry date. The lady could sue grower's etc against this Act, as the bananas were not safe to eat.

Consumers face many situations in which a trader has broken unfair trading regulations but they have no direct course of action, the Law Commission and Law Commission of Scotland have said. Laws that could cover consumers are too complex, they said.

Unfair trading is prohibited by the Consumer Protection from Unfair Trading Regulations, which are known as the Consumer Protection Regulations (CPRs). But action under the CPRs can only be taken by the Office of Fair Trading (OFT) and Trading Standards Departments, which can take civil and criminal actions under them.

The CPRs leave consumers without the ability to take action directly, despite calls by consumer groups in recent years and even by members of the European Parliament to give them the right to take direct action.

JUDICIAL TREND

Purchase or hire of goods and services has become an inevitable part of our daily lives. This decision to effectuate such purchase or hire such service is essentially based on trust, failing which can cause, more often than not to the consumers, anything from a monetary loss to physical harm. Consumer Protection Act, 1986 aims to provide speedy relief to such breach of trust or negligence. A hierarchy of three tribunals has been set up for this purpose—

- The District Consumer Disputes Redressal Forum (DCDRF),
- The State Consumer Dispute Redressal Commission (SCDRC), and
- The National Consumer Dispute Redressal Commission (NCDRC).

Over the years, these tribunals, along with the apex court, have developed a better understanding of the CPA, meanwhile making sure to strike a perfect balance between the demands of both sides.

In the famous case of **Karnataka Power Transmission Corporation v Ashok Iron Works Private Limited¹(2009)**, Supreme court held that a corporate body is included in the meaning of ‘person’ in section 2(1)(m) of the CPA. It reiterated the position of Lord Watson in **Dilworth v. Commissioner of Stamps²** that the word “includes” is generally used to enlarge the meaning of the word but can alternatively be used to say “mean and include”, in which case what follows is an exhaustive explanation. The interpretation depends on the text, context, and objective of the Act. It was held that the section never intended to exclude juristic persons from its purview and the definition is inclusive in nature.

In deciding the case of **Indian Medical Association v V.P. Shantha and others(2011)³** regarding the deficiency of medical service, the court held that the services rendered by a medical professional fall within the ambit of ‘services’ under the section 2(1)(o) of the Act. It rejected the contention that a medical practitioner, being a professional and falling under the scope of Indian Medical Council Act, stands excluded from the CPA.

Moreover, it held that provision of a token fee (for the hospital administrative purposes) would not include an otherwise free service within the ambit of the definition of services. Also, the cost of the services paid by the employer or the insurance company would be deemed similar to paying for the service by the consumer itself.

Services have to be rendered to the consumers with due care and in accordance with the Law and there was one case which was not in accordance with this phrase. In the case of **Arvind Shah (Dr.) v Kamlaben Kushwaha⁴** the complainant alleged that his son died due to the administration of a wrong treatment by the doctor. The State Commission upholding negligence provided a compensation of five lakh rupees.

In appeal, the National Commission observed that the two prescriptions that were available on record neither contained any description of the symptoms that the patient was experiencing nor did it have any preliminary vital information that a doctor is mandated to check, as per the guidelines and regulation of the Medical Council of India or the concerned State Medical Council, like body temperature, blood pressure, pulse rate, prior medical history et cetera. If further tests were required for the diagnosis, such was also mandated to be mentioned. The

¹ 2009(3) ALJ 242

² 1899 A.C. 105-106

³ 1996 AIR 550

⁴ III (2009) CPJ 121

commission, following the case of **Samira Kohli v Dr Prabha Manchanda**⁵, Supreme Court held that failure to put such essentials in the prescription amounted to medical negligence. The Commission also noted that availability of such essentials, clinical observations and consent of the patient, point towards the care and diligence of the doctor and act as evidence against frivolous cases of medical negligence.

However, due to lack of available evidence that attributed the death of the patient directly to the negligence, the National Commission reduced the compensation to two and a half Lakhs along with the interest thereon.

In the famous case of **Sehgal School of Competition v Dalbir Singh**⁶, the petitioner, in this case, was made to deposit a lump sum fee for two years within the first six months. When the petitioner left the course midway on account of deficiency in the services, the coaching center refused to refund the remaining amount. The State Tribunal, following the view of the apex court and the National Commission, held that no educational institution shall collect lump sum fee for the duration of the entire course and if one does, such extra fee should be returned in case the student drops out due to deficiency. It noted that any clause in a contract contrary to this is invalid due to lack of equal bargaining power and contravention of the principles of natural justice.

The court was also of the opinion that additional compensation should be granted for the mental agony caused due to approaching the legal forum. However, since such was not asked in the petition, it could not be granted.

In the famous case of **Nizam Institute of Medical Sciences v Prasanth S. Dhananka & Ors.**⁷, the complainant claimed for compensation due to alleged medical negligence before, during and after a medical procedure that led to a partial paralysis of the patient. The National Tribunal ruled medical negligence stating various lapses in all three phases mentioned including on the ground that consent of the patient was taken only for the examination of the tumour and not for its removal.

In the appeal, the Supreme Court confirmed the findings of the Commission and stated that the removal of the tumor was deferred through discussion on record and therefore an implied consent cannot be inferred.

⁵ *I (2008) CPJ 56 (SC)*

⁶ *III (2009) CPJ 33 (NC)*

⁷ [2009] INSC 1073

The court recognized that a balance has to be struck between the inflated demands of the victim and the unreasonable claim of the opposition party that on compensation needs to be paid. It recognized that sympathy for the victim should not come in the way while deciding compensation but the court should not refuse to provide “adequate compensation”. In light of this and the peculiar facts of the case, it increased the sum of compensation to twenty-five Lakhs each for the continuous medical expenses that need to be borne and the loss of employment that the petitioner had suffered. Additionally, compensation for the pain and suffering that the appellant had undergone amounting to ten Lakhs, for the expenses of a driver-cum-attendant for thirty years amounting to seven Lakhs and twenty thousand, for nursing care amounting of fourteen Lakhs and forty thousand and physiotherapy expenses of thirty years amounting to ten Lakhs and eighty thousand along with interest of 6% was also granted.

Accordingly in the case of **Sapient Corporation Employees Provident Fund Trust v HDFC & Ors⁸**, a complaint was filed against HDFC for debiting money without the permission of the holder, the National Commission noted that payment was done in compliances with the order of a statutory authority and only after giving the complainant due notice of the same. The Commission stated that there is a need to guard against the possibility of frivolous complaints from being filed due to the absence of any court fees. For this reason, holding that the complaint lacked seriousness and was filed without sufficient grounds, the Commission imposed a fine of twenty-five thousand on the complainant under section 26 of the Act.

Lastly, *Delhi Development Authority v D.C. Sharma* is a case of an accidental double allotment of a plot by the Delhi Development Authority, the State Commission refused to accept the defence that the plot had not been provided to the complainant only for his failure to pay the cost. It was found from the records that the plot had been allocated to another person. It, therefore, ordered the Delhi Development Authority to either provide another plot of the same description to the appellant under the same conditions or pay the escalated price of the plot.

The National Commission dismissed the revision petition for lack of infirmity in the State Commission’s judgment and ordered the payment of five Lakhs for indulging in unfair trade practices and unduly harassing the respondent for more than eighteen years.

CONCLUSION

⁸ CONSUMER COMPLAINT NO.123 OF 2012.

This paper attempts to explore and identify consumer awareness regarding consumer, responsibilities and Consumer Protection Act, 1986.⁷⁷ It is patently obvious that consumers are not only the largest economic group but also the pivots of all the economic activities. It is also true that the very consumers are the most unaware or voiceless group in most of the countries of consumers, yet they have no power to order where he can make his purchase at will. Instead, whenever he turns he sees only a seller's market. The seller's attitude towards consumer is also of "take it or leave it." The Indian consumer is well aware that all is not well with its world today. Food adulteration is graving fast. He is never sure that he receives correct weights and measures, so many and so ingenuous are the ways used to cheat him. Prices keep rising and in times of shortage, profiteering takes place. As for rations, they are also of low Quality. Every individual is a consumer and he affects and is affected by almost every private and public economic decision. Modern business is described as consumer oriented and business-men study the needs and preferences of consumer to produce and supply goods according to their changing demands. Yet the consumer finds himself subjected to all kinds of exploitation. Consumers are constantly afflicted by shortages of essential items, adulterated products, manifold problems associated with a public utility services and variety of deceptive practices adopted by our business. However, they do not find voices rising in protest but continue to suffer in silence. Hence a heavy responsibility rests on the government on one side and Industry on the other. The industry and business circles should realize that consumer preferences are already appearing on the horizon in many of the metropolitan areas and it may not be very far into the future before consumer bodies in India gain the same level of strength as in other countries, to control the quality, reliability and durability of the various products in the market.

As in the other countries, design concept should cover quality, round operation, easy maintenance, safety of the user as well as the equipment, utility, convenience in handling, economy appearance and good-looks. In other words, the design should essentially be consumer oriented with a view to give full satisfaction.