

# EMERGING DIMENSIONS OF CONSUMER PROTECTION LAW IN INDIA

—*Manoj Kumar\**

*“A customer is the most important visitor on our premises; he is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favor by serving him. He is doing us a favor by giving us an opportunity to do so.”....*

—Mahatma Gandhi

***A**bstract — The promotion and protection of consumer rights has been assuming a very high obligation due to the international character of many business practices and the growing interdependence of the economy of the world on the consumers. There has been consistent demand of the Consumers to provide qualitative goods and improved services in lieu of their money in true sense all over the world. It is true that modern technological innovations and developments have certainly made a mammoth impact on the excellence, availability, accessibility and security of goods and services. Nevertheless, in spite of these efforts and developments, the consumers have been experiencing unscrupulous and exploitative practices. The abuse of Consumers right occurs in many forms like excessive prices, poor quality, food adulteration, doubtful hire purchase policy, spurious drugs, deficient services, deceptive advertisements, black marketing, hazardous products and so on and so forth. Therefore, in this paper This Paper focuses mainly on the consumer protection*

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*issues from various aspects and perspectives and also provides some remedial or suggestive measures which will be helpful for the promotion and protection of consumer rights.*

**Keywords:** Consumer Protection Law, Central Consumer Protection Authority, Consumer Education, Consumer Rights, Unfair Trade Practices

## I. INTRODUCTION

The growth of worldwide significance on consumer rights protection and promotion has been contributed by the emergent international character of many business practices and interdependence of the world economy. There has been worldwide demand by the consumers, clients and customers to provide value for their money in the form of superior goods and better services. The contemporary scientific and technical developments have undoubtedly caused immense impact on the quality and safety of goods and services. However, the reality is that the consumers have been the victim of exploitative and unscrupulous practices. The abuse of consumers rights occurs in many forms such as excessive prices, adulteration of food, dubious hire purchase plans, poor quality, spurious drugs, deceptive advertisements, deficient services, black marketing, hazardous products etc. There has been various types of challenges with the revolution in information technology which are faced by the consumers like plastic money, cyber crimes etc. The phrases ‘Consumer is sovereign’ and ‘consumer is the king’ are not more than myths in the recent conditions mainly in the developing nations. However, it must be realised that the government and the industry both must ensure Consumer protection as it is a socio-economic programme since the satisfaction of the consumers is in the interest of both. Therefore, the duty of protection of the consumers’ rights and interests through proper policy measures, legal framework and administrative structure rests solely with the government.<sup>1</sup>

The term ‘Consumer Protection’ is as aged as consumer exploitation and it has assumed higher relevance and importance in recent times. The concept of consumerism has been a common and recent phenomenon. Consumerism is a

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<sup>1</sup> S.S. Singh and Sapna Chadah, Consumer Protection in India – Some Reflections 3, (Indian Institute of Public Administration, New Delhi, 2005).

social movement and concerned about protection of the consumers interest.<sup>2</sup> The McMillan Dictionary (1985) defines consumerism as:-

“Consumerism is concerned with protecting consumers from all organisations with which there is exchanged relationship. It encompasses the set of activities of government, business, independent organisations and concerned consumers that are designed to protect the rights of consumers”.<sup>3</sup>

According to the Chamber’s Dictionary (1993), “Consumerism means as the protection of the rights of the buyers of goods and services against faulty or hazardous goods etc.”<sup>4</sup>

Hence, consumerism denotes to broad variety of actions of business, government and independent organisations intended to protect consumers rights. It is a method through which the consumers ask for restitution, redress and remedy for their disappointment and dissatisfaction with the aid of their all unorganised or organised activities and efforts. It is in reality a social movement aiming to defend the rights of customers in respect of the manufacturers of goods and service providers. Indeed, consumerism these days is a broader term which means nothing more than citizens search for receiving better worth for their money. Customer is the crucial point of any business. Satisfaction of consumers will advantage not only business but society and government as well. Therefore, consumerism should not be understood as consumers’ combat against business. Consumerism is a combined awareness on the part of business, consumers, civil society and government to develop consumers’ satisfaction and social welfare.<sup>5</sup> It has been observed that the term ‘consumerism’ which is used to describe activities of Government designed to protect consumers, is not a recent progress.<sup>6</sup>

Earlier, the doctrine of caveat emptor (let the buyer beware) was the philosophy of commercial transactions law. Later, it was replaced by caveat venditor (let the seller beware). Therefore, the business is heavily regulated on behalf of the consuming public as a result of this change of legal philosophy.<sup>7</sup>

<sup>2</sup> *The New Shorter Oxford Dictionary*, 1993, p. 490. The word “Consumerism” is also used in pejorative sense meaning “preoccupation with consumer goods and their acquisition”. However, its use in the present work is in a positive sense.

<sup>3</sup> See <[www.macmillandictionary.com](http://www.macmillandictionary.com)>

<sup>4</sup> *The New Encyclopaedia Britannica, Micropaedia*, Vol. III, p. 108. It reads, “Consumerism is a movement or policies aimed at regulating the products or services, methods or standards of manufacturers, sellers and advertisers in the interest of buyers, such regulation may be institutional, statutory or embodied in a voluntary code occupied by a particular industry or it may result more indirectly from the influence of consumer organisations.”

<sup>5</sup> *Supra* note 1 at 6.

<sup>6</sup> Gurjeet Singh, “Green Consumerism in India: The Challenges Ahead” ICPI 10 (1998).

<sup>7</sup> Avtar Singh, *Consumer Protection Law and Practice 7* (Eastern Book Company, Lucknow, 5<sup>th</sup> edn., 2015).

## II. INTERNATIONAL DEVELOPMENTS RELATING TO CONSUMER PROTECTION LAW

The concept of consumerism is as old as the consumer. The consumerism activists consider that the customer must be correctly informed concerning the goods they desire to purchase. The Late President of the United States, John F. Kennedy, on 15<sup>th</sup> March, 1962 said in a special message to the Congress on protection of consumers that Consumers have certain definite and basic rights.<sup>8</sup> These are (i) right to information, (ii) right to choice; (iii) right to be heard and (iv) right to safety. One more right namely right to consumer education was added by President Gerald R. Ford to these four rights. Later, some other rights such as right to basic needs (Food, Clothing and Shelter) and right to healthy environment were included. Therefore, World Consumer Rights Day is celebrated every year on 15<sup>th</sup> March.<sup>9</sup> In India, 24<sup>th</sup> December is celebrated as the National Consumer Rights Day every year.

Another major development took place in the year 1985. The United Nations had passed a resolution on April 1985<sup>10</sup> indicating certain guidelines under which the Government could make law for better protection of the interest of the consumers. These guidelines includes a complete policy framework defining what governments need to carry out to encourage consumer protection in below mentioned seven areas:

- i. Physical safety;
- ii. Promotion and Protection of the consumer economic interest;
- iii. Standards for the quality and safety of consumer goods and services;

<sup>8</sup> John A. Occhiogrosso, "Consumer Protection, Information and Education: A County's View", 8 San Diego Law Review 38 (1970).

<sup>9</sup> *Supra* note 1 at 7.

<sup>10</sup> The Secretary General, United Nations submitted draft guidelines for consumer protection to the Economic and Social Council in 1983. The General Assembly of the United Nations upon extensive discussion and negotiations among Governments on the scope and content thereof adopted certain guidelines for consumer protection. The framework for the Consumer Act was provided by a resolution dated 9<sup>th</sup> April, 1985 of the General Assembly of the UNO vide "Consumer Protection Resolution No. 39/248." India is a signatory to this Resolution. These guidelines for consumer protection have the following objectives: "(a) To assist countries in achieving or maintaining adequate protection for their population as consumers; (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers; (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; (e) To facilitate the development of independent consumer groups; (f) To further international cooperation in the field of consumer protection; (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices; (h) To promote sustainable consumption." See also *Spring Meadows Hospital v. Harjol Ahluwalia*, (1998) 4 SCC 39; *J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635; *State of Karnataka v. Vishwabharathi House Building Coop. Society*, (2003) 2 SCC 412.

- iv. Distribution facilities for consumer goods and services;
- v. Measures enabling consumers to get redress;
- vi. Measures relating to specific areas (food, water and pharmaceuticals) and
- vii. Information programme and consumer education.

These guidelines lay down universal recognised set of fundamental goals for underdeveloped and developing countries for intensification and structuring their consumer protection legislations and policies. These guidelines were approved in the light of the fact that the consumers usually face disparity in bargaining power, economic terms and educational levels. Further, the consumers should be given the right of access to non-dangerous products and to give significance of encouraging just, equitable and sustainable social and economic development.<sup>11</sup>

These guidelines further require that governments must sustain sufficient infrastructure to implement, develop and monitor consumer protection policies. They must specially ensure that actions for consumer protection are executed for the advantage of all sectors of the population. Governments ought to collaborate to develop the conditions under which necessary goods are offered to consumers, giving due regard to both quality and price.<sup>12</sup> Later, an important step was taken on review of U.N. guidelines in the year 1999 through which the words “sustainable consumption” were also included in the above list. The concept of sustainable consumption can be traced to the writings of Mahatma Gandhi. He said that:-

“the rich must live more simply so that the poor may simply live.”<sup>13</sup>

### III. CONSTITUTIONAL PROVISIONS REGARDING CONSUMER PROTECTION

The Constitution of India does not provide any express provision in relation to the consumers, however, there has been various provisions which are directly related to the consumer interests. Though most of these provisions fall in Part IV of the Constitution of India pertaining to the Directive Principles of State Policy.<sup>14</sup> The Constitution also provides certain guarantees to the citizens in Part III dealing with Fundamental Rights. Under this Part, Article 19(1)

<sup>11</sup> *Supra* note 1 at 8.

<sup>12</sup> Dr V.K. Agarwal, *Consumer Protection Law and Practice 5* (B.L.H. Publishers Distributors Pvt. Ltd., New Delhi, 5<sup>th</sup> edn., 2003).

<sup>13</sup> *Supra* note 1 at 9.

<sup>14</sup> S.K. Verma and M. Afzal Wani, *A Treatise on Consumer Protection Laws 18* (Indian Law Institute, New Delhi, 2004).

(g) expressly lays down fundamental freedoms namely freedom of trade or business, to undertake any occupation and practice any profession. Therefore, Article 19(1)(g) ensures that the State cannot restrain a citizen from carrying on a business or occupation except a law which imposes a reasonable restriction in the general public interest. However, as per Article 19(6), such a right cannot be enforced in case if the business is immoral or dangerous. Such a business can be required to be licensed or absolutely forbidden. Furthermore, reasonable restrictions may be imposed on a trade or business in terms of time and place. There cannot be a right to carry on a trade or business at any time or at every place.<sup>15</sup> The State can impose reasonable restrictions on any 'harmful trade'<sup>16</sup> or 'dangerous trade'<sup>17</sup> and 'business on the streets.'<sup>18</sup> Such restrictions can be put for public convenience also.<sup>19</sup>

It is to be noted that wherever such licences and permits are required for commencement of a trade or business, the administrative authority will not have absolute discretion in the grant of such licences and clear policies have to be provided by the governing law on which the discretion can be exercised, keeping in mind the consumer interest. The administrative discretion has to be exercised judicially. If the law requiring licence, does not set out the considerations, it would be void. If considerations are set out in the law, but are departed from by the competent authority, while administering the law, then the order of the competent authority would be void, despite the law being valid. Generally, an existing licence cannot be revoked without giving the licensee an opportunity of being heard.<sup>20</sup> There can be restrictions on licences but these must be reasonable.<sup>21</sup> The restrictions should be, *inter alia*, in the interest of consumers. Accordingly, total prohibition can be imposed against manufacture of drugs or preparations which are injurious to health.<sup>22</sup>

The government or administrative authority must rely on scientific testing by experts in order to impose restrictions on the manufacture, import, sale or distribution of any product on the ground of public health. The Supreme Court followed this principle in *Vincent Panikurlangara v. Union of India*,<sup>23</sup> where a Public Interest Litigation was filed by an advocate seeking directions in public interest for prohibition of import, production, sale and distribution

<sup>15</sup> *Ibid.*

<sup>16</sup> *Har Shankar v. Excise & Taxation Commr.*, (1975) 1 SCC 737 : AIR 1975 SC 1121.

<sup>17</sup> *Lakhanlal v. State of Orissa*, (1976) 4 SCC 660 : AIR 1977 SC 722.

<sup>18</sup> *Pyare Lal v. New Delhi Municipal Committee*, (1967) 3 SCC 747 : AIR 1968 SC 133, 138.

<sup>19</sup> *T.B. Ibrahim v. Regional Transport Authority*, AIR 1953 SC 79 : 1953 SCR 290, 299.

<sup>20</sup> *Dwarka Prasad Laxmi Narain v. State of U.P.*, AIR 1954 SC 224 : 1954 SCR 803; *Mohd. Faruk v. State of M.P.*, (1969) 1 SCC 853 : AIR 1970 SC 93, 96; *Fedco (P) Ltd. v. S.N. Bilgrami*, AIR 1960 SC 415 : (1960) SCJ 235, 249; and *Sukhmandan Saran Dinesh Kumar v. Union of India*, (1982) 2 SCC 150 : AIR 1982 SC 902.

<sup>21</sup> *All Delhi Cycle Rickshaw Operators' Union v. MCD*, (1987) 1 SCC 371 : AIR 1987 SC 648.

<sup>22</sup> *Laxmikant v. Union of India*, (1997) 4 SCC 739.

<sup>23</sup> (1987) 2 SCC 165 : AIR 1987 SC 990.

of certain drugs which had been recommended for proscription by the Drugs Consultative Committee. The Supreme Court held that:

“having regard to the magnitude, complexity and technical nature of the inquiry involved in the matter and keeping in view the far reaching implications of the total ban on certain medicines for which the Petitioner has prayed, we must at the outset clearly indicate that the judicial proceeding of the nature initiated is not an appropriate one for determination of such matters.”

The same approach was followed by the Supreme Court in the later case of *Dr. Shivarao Shantaram Wagle v. Union of India*,<sup>24</sup> where it was asked to issue direction to the government to refrain from releasing Irish butter for human consumption on the ground of contamination by Chernobyl nuclear fallout. This Irish butter had been imported into India under the EEC Grant-in-Aid for Operation Food Programme. The Supreme Court constituted a Committee of Experts to give opinion on the issue “whether milk and dairy products and other food products containing man made radio nuclides within permissible levels fixed by Atomic Energy Regulatory Board on 27th August, 1987, are safe and/or, harmless for human consumption”. The Committee gave its report and found the butter in issue to be harmless and safe for human consumption. The Supreme Court relied on the Expert Committee report and refused to issue any kind of restraining orders.

Article 21 of the Constitution of India guarantees to every person right to life and personal liberty which means right to life with dignity which is free from all kinds of exploitation. Article 38 necessitates the State to bring about a social order in which justice - social, economic and political shall in form all the institutions of life. The consumer ought not to be ignored while giving any realistic shape to this directive principle. Articles 39 (b) and (c) also provides that the State is required to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, and the operation of the economic system should not result in the concentration of wealth and means of production to the common detriment. This is one of the most important directive principle to the State under Chapter IV of the Constitution of India, which ropes the whole public distribution system and the administrative mechanism to control profiteering and hoarding in India. The Supreme Court has held that a Statutory Corporation, even if it may not be a public utility, has also to comply with Article 39 of the Constitution and charge only fair prices.<sup>25</sup>

<sup>24</sup> (1988) 2 SCC 115 : AIR 1988 SC 952.

<sup>25</sup> *ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat*, 1990 Supp SCC 397 : AIR 1990 SC 1851.

Article 43 obligates the State to secure, by suitable legislation or economic organisation or in any other way, for all workers, agricultural, industrial or otherwise, work, a living usage, conditions of work ensuring a decent standard of life and full enjoyment of leisure. This provision is in consonance of the principles laid down by the International Labour Organisation which is promoting the interests of workers as consumers. Public Health has been dealt with in Article 47, which obliges the State to take steps to raise the level of nutrition and the standard of living to improve public health and to prohibit consumption of intoxicating drinks or drugs which are injurious to health. The Constitution of India has distributed the subjects, relating to goods and service regulation, between the Centre and the States. Therefore, most of the subjects relating to consumer protection have also been placed in the Concurrent List.<sup>26</sup>

#### IV. LEGAL FRAMEWORK OF CONSUMER PROTECTION LAW IN INDIA

The want for consumer protection in India has been crucial in view of the constantly growing population and the resulting need for various goods and services of which is no matching supply. The mounting consumer exploitation in India could be ascribed to the poverty, illiteracy, lack of education, lack of information, conventional attitude of Indians to suffer in silence and their unawareness of the accessible legal remedies in such cases.<sup>27</sup>

The profound roots of consumer protection had been established in the affluent soil of Indian culture, which could have been traced to 3200 B.C. In ancient India, moral and ethical values were regarded of great significance and human principles were appreciated, though, the kings believed that the most important part of their concern was the welfare of their subjects. They exhibited enthusiastic interest in regulating the social circumstances as well as the economic life of the citizens, establishing several business restrictions to safeguard the interests of the buyers.<sup>28</sup> The governing norms with respect to human relations in ancient India was *Dharam-Shastra* (Principles of *Dharma*).<sup>29</sup> The Principles of *Dharma* were mentioned in *Vedas* and they were considered as the prime sources of law in India.<sup>30</sup> Many writers and commentators of the ancient age recognised the existing situations of the citizens through their

<sup>26</sup> *Supra* note 13 at 20.

<sup>27</sup> Ashok R. Patil, "A Study on Consumer Protection through Maintenance of Product Safety and Standards in India" ASLI Working Paper No. 023 Asian Law Institute 2 (2011).

<sup>28</sup> Dr A. Rajendra Prasad, "Historical Evolution of Consumer Protection and Law in India, A Bird's Eye View" 11 *Journal of Texas Consumer Law* 132 (2008).

<sup>29</sup> Gurjeet Singh, "The Problem of Consumer Protection in India: A Historical Perspective" No. 6 *Consumer Protection Reporter* 705 (1994).

<sup>30</sup> Sraddhakara Supakara, *Law of Procedure and Justice in Ancient India* 38 (Deep and Deep Publications, New Delhi, 1986). *Vedas* were considered the words of God, and law was said to have divine origin which was transmitted to society through sages. Veda means knowledge. There are four Vedas: the Rigveda, the Yajurveda, the Samaveda and the Atharvaveda.



innovative and divine writings in the form of sruti (revelation) and Smriti (tradition) and also provided code of conduct to guide the rulers and kings with respect to the system of ruling the State and its subjects. The idea of consumer protection had also been the chief concern in their writings.<sup>31</sup>

*Manu Smriti* elucidates the social, economic and political conditions of primeval society. Manu has been regarded as the ancient law creator. He discussed in his writings about ethical trade practices and laid down a code of conduct to vendors and provided penalty to people who committed certain crime against buyers.<sup>32</sup>

Kautilya's *Arthashastra* was written after *Manu Smriti*. In Ancient India, it is regarded as to be a major source and a treatise, elucidating numerous theories of statecraft and the rights and duties of subjects. Although it is primarily concerned with affairs of practical administration, however, the issue of consumer protection occupies an important place in *Arthashastra*. It discusses the role to be played by the State in regulating trade and its obligation to prevent offenses against customers.<sup>33</sup>

In the Medieval era, the protection of the interests of consumers continued to be of main concern of the kings or rulers. During Muslim rule in India, a large number of units of weights were in practice.<sup>34</sup> In the Sultanate period, the local circumstances decided the prices used.<sup>35</sup> In the rule of Alauddin Khalji<sup>36</sup>, strict control was established in the market place.<sup>37</sup> The cost at which continued supply of grains was made to the city and grain-carriers was determined by the Sultan in those days.<sup>38</sup> There had been a process for price-enforcement in the market. Similarly, shop- owners were punished for under weighing their merchandise.<sup>39</sup>

In the Modern Period, the traditional legal system was replaced by the Britishers and a new Indian legal system was slowly and gradually introduced. It may be noted that one of the most outstanding achievement of Britain reign

<sup>31</sup> *Supra* note 28 at 133.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Id.* See R.P. Kangle, *The Kautiliya Arthashastra – Part II* (Bombay University, 2nd edn., 1972); See also R.P. Kangle, *The Kautiliya Arthashastra – Part III – A Study* 116 (Motilal Banarasidas, Delhi, 2000).

<sup>34</sup> Maulana Hakim Syed Abdulhai, *India-During Muslim Rule* 127 (Mohiuddin Ahmad trans., 1977).

<sup>35</sup> S.R. Bakshi, *Advanced History of Medieval India Vol. I* 287 (Anmol Publications Pvt. Ltd., 2003).

<sup>36</sup> 1296- 1316.

<sup>37</sup> Sanjay Subrahmanyam (ed.), Irfan Habib on *The Price Regulations 'Ala' Uddin Khalji – A Defence of 'Za' Barani*, in *Money and the Market in India 100-1700* 85 (1998).

<sup>38</sup> *Id.* at 88.

<sup>39</sup> *Id.* at 89.

in India was “the creation of a united national contemporary legal system.”<sup>40</sup> In the British period, the British legal system was established to administer justice and the Indian legal system was entirely changed. However, the customs and traditions of the Indian legal system were not disregarded.<sup>41</sup> The British government conceded some laws during their regime relating to consumer rights.<sup>42</sup> The necessity to guarantee the fundamental rights to health, safety, etc. of consumers had long been acknowledged the worldwide and several general laws were passed in India and abroad in this area. The general laws which were enacted in India except the law of torts which ultimately aimed at protection of consumers interests are: The Indian Penal Code, 1860, The Indian Contract Act, 1872, The Usurious Loans Act of 1918, The Dangerous Drugs Act, 1930, The Sale of Goods Act, 1930, The Agricultural Produce (Grading and Marketing Act), 1937 and The Drugs and Cosmetics Act, 1940. Such laws prescribed precise legal safeguard for consumers’ interest.

After independence, certain laws relating to consumer protection were enacted which include: The Indian Standards Institution (Certification Marks) Act, 1952, The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, The Prevention of Food Adulteration Act, 1954, the Essential Commodities Act of 1955, The Trade and Merchandise Marks Act, 1958 (Now Trade Marks Act, 1999), The Patents Act, 1970, The Standard of Weights and Measures Act, 1976 (Now Legal Metrology Act, 2009) and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. These are beneficial legislations and the consumers are not required to prove *mens rea*. Strict liability has been provided for such offences and the liability of wrongdoer is not dependent on any particular intention or knowledge.<sup>43</sup> Criminal law in the area of consumer protection has obtained a lot of importance because the consumers are not very much interested to register civil cases for petty claims. It has been said that “the functional value of criminal law in the field of consumer protection is a high one and it has a respectable pedigree.”<sup>44</sup> Another outlook is that there has been an effort to see at consumer protection as “a public interest issue rather than as a private issue” to be left to persons for settlement in court.<sup>45</sup>

These legislations contained regulatory provisions and contravention of these provisions attracted civil liability. This meant that an ordinary consumer had no other remedy but to initiate action by way of a civil suit which has

<sup>40</sup> Marc Galanter, *Law and Society in Modern India* 15 (Oxford University Paperbacks, 1997).

<sup>41</sup> From 1600 to 1947. The Regulating Act of 1773 was passed by the British Parliament and one of its objectives was to bring the management of the East India Company under the control of the British Parliament and British Crown.

<sup>42</sup> *Supra* note 28 at 134.

<sup>43</sup> D.N. Saraf, *Law of Consumer Protection in India* 169 (S.N. Tripathy, Bombay, 1990).

<sup>44</sup> Gordon Borrie, *The Development of Consumer Law and Policy: Bold Spirits and Timorous Souls* Hamlyn Lecture Series 3 (Stevens, 1984)

<sup>45</sup> *Supra* note 28 at 134.

been long and tardy legal process resulting in high expensive and time consuming for the consumers. In reality, many times the cost incurred in the legal process had been disproportionate to the compensation claimed and awarded to a consumer. Though the MRTP Commission was proved to be less time-consuming and far more accessible than the ordinary Civil Courts, its central position at New Delhi did not make the Commission accessible to all consumers, specially to those persons who were situated in villages and the remote towns of the nation. Therefore, in spite of these laws and institutions the consumers did not have any institutional arrangement or effective mechanism for the quick remedy of their grievances and also the lack of efficient popular movement isolated the consumer and his dilemma only amplified.<sup>46</sup> Therefore, it became compulsory to enact laws aimed at protecting the consumers together with providing for remedies which are more accessible, simpler, quicker and in expensive.

This cemented the way for passing of The Consumer Protection Act, 1986 providing for simple, speedy and easy remedy to consumers under a three-tier quasi judicial redressal agency at the District, State and National levels. The Consumer Protection Act, 1986, was the legislative response to check tendencies of the trader community and to protect the interests of the general consumers of the country. This Act is regarded as '*Magna Carta*' in the field of Consumer Protection for checking the unfair trade practices and deficiency in goods and services.<sup>47</sup>

The Act of 1986 was amended by the Consumer Protection (Amendment) Act, 2002 (which came into force w.e.f. March 15, 2003) in order to make the Act more effective and meaningful and to make necessary changes in it.

The Consumer Protection Act, 1986 was passed to give for better protection of the interests of consumers and to make provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. Although, the functioning of the consumer dispute redressal agencies has served the purpose to a significant extent under this Act, the disposal of cases has not been quick due to diverse restraints.

Consumer marketplace for goods and services have undergone radical renovation since the passing of the Consumer Protection Act in 1986 (hereinafter to be called as CPA, 1986). The contemporary market includes a glut of goods and services. The growth in worldwide trade, emergence of international supply chains and the fast expansion of e-commerce have resulted in new delivery systems for goods and services and have afforded new opportunities and options for consumers. Further, the Digital era has ushered in a

<sup>46</sup> *Supra* note 1 at 11.

<sup>47</sup> Showkat Hussain Shah, "Consumer Interest Litigation under the Consumer Protection Act, 1986 in India: A Critical Analysis", 3 Nirma University Law Journal 1 (2014).

novel age of trade and commerce and digital branding, as well as a fresh set of consumer outlook. Digitisation has provided easy access, a large variety of choice, convenient payment mechanisms, improved services and shopping as per convenience. Similarly, this has exposed the consumer to vulnerability and to new forms of unethical and unfair trade and business practices. The concept of consumer protection has been facing different challenges like misleading advertisements, telemarketing, multi-level marketing, direct selling and e-commerce and it will need suitable and swift administrative interventions to prevent consumer harm. Keeping this in mind and to tackle the new set of challenges faced by consumers in this digital era, the Parliament of India on 6 August 2019 passed the Consumer Protection Bill, 2019. The Consumer Protection Act, 2019 (hereinafter to be called as CPA, 2019) received the assent of the President and was published in the official gazette on 9 August 2019.<sup>48</sup> This Act has been notified by the Central government on 15<sup>th</sup> July, 2020 and it became applicable from 20<sup>th</sup> July, 2020.<sup>49</sup> This Act aims to provide the timely and effective administration and settlement of consumer disputes. The CPA, 2019 has come into force on such date as the Central Government may so notify. The CPA, 2019 seeks to replace the more than 3 (three) decades old the Consumer Protection Act, 1986.

## **V. THE CONSUMER PROTECTION ACT, 2019: SALIENT FEATURES**

This Act aims to protect the interests of consumers by establishing authorities for timely and effective administration and settlement of consumers' dispute.<sup>50</sup> The CPA, 2019 contains many new features as compared to the old Consumer Protection Act, 1986. The main features of CPA, 2019 may be summarised as follows:

The first feature of the CPA, 2019 is that it Covers E-Commerce Transactions in its ambit. The CPA, 2019 has broadened the definition of 'consumer' to address the challenges due to socio economic developments in the era of economic liberalisation, globalisation and privatisation. This definition currently consist of any person who purchases any goods and avails or hires any services whether through offline or online transactions, tele shopping, electronic means, direct selling or multi-level marketing. As a result, the vendor at each level of multi-level marketing can be held liable under CPA, 2019 and

<sup>48</sup> See The Gazette of India, Ministry of Law and Justice, Legislative Department, Dated 9<sup>th</sup> August, 2019.

<sup>49</sup> See The Gazette of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs Dated 15<sup>th</sup> July, 2020.

<sup>50</sup> The Policy of the Consumer Protection Act, 2019 reads "An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto."

not limited to only the manufacturer of the product but every persons involved at different stages of production and marketing. Earlier, the CPA, 1986 did not expressly include e-commerce transactions. Therefore, the CPA, 2019 has addressed this lacuna by adding a new express explanation to the definition of the word ‘consumer’.<sup>51</sup>

The second feature is that the CPA, 2019 introduces a wider definition of ‘Unfair Trade Practices.’<sup>52</sup> The CPA, 1986 had provided in the definition of Unfair Trade Practice only six categories of unfair trade practices. However, the CPA, 2019 has added three more types of unfair trade practices.<sup>53</sup> Further, although the definition of ‘Complaint’ under the CPA, 1986 provided six main grounds to file complaints, the new definition under the CPA, 2019 has added one more ground to it.<sup>54</sup> This definition has also considerably modified one of

<sup>51</sup> The Consumer Protection Act, 2019, (Act 35 of 2019), S. 2(7). This definition reads: “consumer means any person who—

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

<sup>52</sup> The Consumer Protection Act, 2019, (Act 35 of 2019), S. 2(47).

<sup>53</sup> *Ibid.* S. 2(47) reads “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

- (i) ....(ii).....(iii).....(iv).....(v).....(vi).....
- (vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- (viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;
- (ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.”

<sup>54</sup> *Id.* at S. 2(6). This section reads “complaint” means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—

the existing grounds to file complaints under Section 2(c)(i) of the CPA, 1986 and the term ‘unfair contract’<sup>55</sup> has also been included which further widens the ground to file complaints and allows consumers to challenge agreements which are unilateral, unfair and unreasonable.

Thirdly, the CPA, 2019 increases pecuniary jurisdiction of the three tier Consumer Disputes Redressal Commissions. Accordingly, the jurisdiction of District Consumer Redressal Commission in consumer complaints will be the value of goods or services paid which does not exceed one crore rupees.<sup>56</sup> The State Commission can judge consumer disputes where such value surpasses one crore rupee show ever does not exceed ten crore rupees,<sup>57</sup> and the National Commission will have jurisdiction where such value exceeds ten crore rupees.<sup>58</sup> Under CPA, 1986, the pecuniary jurisdiction of the District Commission, State Commission and National Commission was rupees twenty lakhs, twenty lacks to one crore and above one crore respectively.<sup>59</sup> The raising of the pecuniary jurisdiction of all three commissions is a welcome step as it will be helpful in attracting lesser number of consumer cases in appellate commissions to an extent, thus ensuring swifter disposal of consumer cases.

Fourthly, another feature of the CPA, 2019 is that it provides the facility of E-Filing of consumer complaints in the era of Digital India.<sup>60</sup> This new facility gives flexibility to the consumers to file complaints with the appropriate consumer commission located at the place of work or residence of the consumer. This is contrasting to the existing practice of filing it at the place of purchase or where the seller has its registered office address. It also gives facility by making enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video conferencing.<sup>61</sup> This facility will result in procedural ease and reduce harassment and inconvenience for the consumers.

The fifth feature of CPA, 2019 is to provide for the establishment of Central Consumer Protection Authority (CCPA) to promote, protect, and enforce the rights of consumers and to regulate unfair trade practices, misleading or false advertisements which are detrimental to the interest of the consumers

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- (i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
  - (ii) (iii).....(iv).....(vi).....
  - (vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be.”

<sup>55</sup> *Ibid.*

<sup>56</sup> *Id.* at S. 34.

<sup>57</sup> *Id.* at S. 47.

<sup>58</sup> *Id.* at S. 58.

<sup>59</sup> The Consumer Protection Act, 1986, (Act 68 of 1986), Ss. 11, 17, 21.

<sup>60</sup> The Consumer Protection Act, 2019, (Act 35 of 2019), S. 35.

<sup>61</sup> *Id.* at S. 38.

or public as a class.<sup>62</sup> The primary reason for setting up this Authority is to fill an institutional void in the existing regulatory regime in the sector of consumer protection.<sup>63</sup> The Authority will comprise of a Chief Commissioner and such number of other Commissioners as may be determined by the Central Government to execute the powers and perform the functions under the Act.<sup>64</sup> The Authority will have broad powers of enforcement.<sup>65</sup> The Authority will have an Investigation Wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations.<sup>66</sup> The Authority will have wide powers to take suo motu actions, recall products, order reimbursement of the price of goods or services, cancel licenses and file class action suits, if a consumer complaint affects more than one individual.<sup>67</sup> The establishment of a

<sup>62</sup> *Id.* at S. 10(1).

<sup>63</sup> See Statement of Objects and Reasons of the Consumer Protection Bill, 2019.

<sup>64</sup> The Consumer Protection Act, 2019, (Act 35 of 2019), S. 10(2).

<sup>65</sup> *Id.* at S. 18. It reads, “(1) The Central Authority shall—

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
  - (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
  - (c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;
  - (d) ensure that no person takes part in the publication of any advertisement which is false or misleading.
- (2) Without prejudice to the generality of the provisions contained in sub-section (1), the Central Authority may, for any of the purposes aforesaid,—
- (a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either *suo motu* or on a complaint received or on the directions from the Central Government;
  - (b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;
  - (c) intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
  - (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;
  - (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
  - (f) undertake and promote research in the field of consumer rights;
  - (g) spread and promote awareness on consumer rights;
  - (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
  - (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers’ interest;
  - (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
  - (k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures; and
  - (l) issue necessary guidelines to prevent unfair trade practices and protect consumers’ interest.

<sup>66</sup> *Id.* at S. 15.

<sup>67</sup> *Id.* at Ss. 20, 21, 22.

central authority and initiating action as a class comes as an additional mode of relief which can be exercised along with individual consumers filing complaints to address their grievances thereby having two parallel proceedings.

The Authority can impose a penalty of up to ten lakhs rupees for on a manufacturer or an endorser, for a false or misleading advertisement. The Authority can also impose a penalty which may extend to fifty lakhs rupees for every subsequent contravention by a manufacturer or endorser.<sup>68</sup> The Authority can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to one year and for every subsequent contravention three years.<sup>69</sup> Therefore, the CPA, 2019 fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

Sixthly, the CPA, 2019 provides for mediation as an Alternate Dispute Resolution mechanism for making the process of dispute settlement simpler quicker and simpler. It provides for settlement of disputes by way of mediation in case there is a possibility of settlement at the stage of admission of complaint or at any later stage, if acceptable to both parties. A mediation cell will be attached to each district, state and National Commission and its regional Benches for quick resolution.<sup>70</sup> Mediation will be helpful in speedier resolution of disputes and decrease pressure on consumer courts, which already have abundant cases pending before them.

The seventh feature of the CPA, 2019 is that it introduces the idea of ‘Product Liability’<sup>71</sup> and brings within its compass, the product producer/ manufacturer, product seller and product service provider for any claim for damages.<sup>72</sup> Further, the definition of the word ‘product seller’<sup>73</sup> includes a person who is involved in placing the product for a commercial purpose and it would consist of e-commerce platforms also. The argument that e-commerce platforms simply perform the role as ‘aggregators’ or ‘platforms’ shall not be accepted. It may be noted that there was no distinct law regulating ‘product liability’

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<sup>68</sup> *Id.* at S. 21(2).

<sup>69</sup> *Id.* at S. 21(3).

<sup>70</sup> *Id.* at S. 37.

<sup>71</sup> The Consumer Protection Act, 2019, (Act 35 of 2019), Chapter VI, Ss. 82-87. The term product liability has been designed under S. 2(34). It reads, “product liability” means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto.”

<sup>72</sup> *Id.* at S. 82.

<sup>73</sup> *Id.* at S. 2(37).



in India, although it was mentioned under the CPA, 1986 provided affected person was included within the sphere of 'consumer'. The incorporation of 'Product Liability' in Chapter VI of CPA, 2019 and a novel ground for filing a complaint has been the most noteworthy developments. Further, the CPA, 2019 has also provided clarity on who can be made liable for an action under Chapter VI of CPA, 2019 by defining the words 'product manufacturer', 'product seller' and 'product service provider'.<sup>74</sup>

## VI. CONCLUSION

The growth of consumer protection law in India has seen a long journey as is evident in the CPA, 2019 which has made a number of changes to the former the CPA, 1986. This Act has spread the reach of consumer protection regime in India and tried to address the latest scientific and technological issues relating to consumer protection in the era of economic liberalisation, globalisation and privatisation. These developments seem to further empower consumers by leveraging responsibilities not only on their counterparts, i.e., the sellers, manufacturers, service providers, but also the endorsers of such products. It also attempts to address the issues that were not comprehensively touched upon by CPA, 1986, such interests of consumers as a class, etc. The CPA, 2019 has also attempted to ease and fasten the process of consumer disputes resolution by attaching mediation cells, increasing the pecuniary jurisdiction of the commissions, increasing the members of the commissions, imposing higher penalties etc.

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<sup>74</sup> *Id.* at Ss. 36, 37, 38.