

Consumer Protection Act, 2019: A New Milestone in Empowering Consumers

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National Consumer Day is observed on 24 December every year. This day highlights the importance of the consumer movement and the need to make consumers more aware of their rights and responsibilities. The article elucidates on the new Consumer Protection Act 2019 which deals specifically with the new-age marketplace issues thus ensuring effective resolution of disputes.

The Indian consumer market has gone through a drastic change over the last two decades with the advent of digital technologies internet, rapid penetration of e-commerce, smart phones, and cloud technologies. The Consumer Protection Act (CPA), 1986 being the foremost legislature for protecting the rights of the consumers had become archaic and does not cover rapid changes in the consumer marketplaces, especially those dealing with online shopping, teleshopping, product recall, unsafe contracts, and misleading advertisements. Therefore, it was felt to replace it with the Consumer Protection Act, 2019.

Justice delayed is justice denied

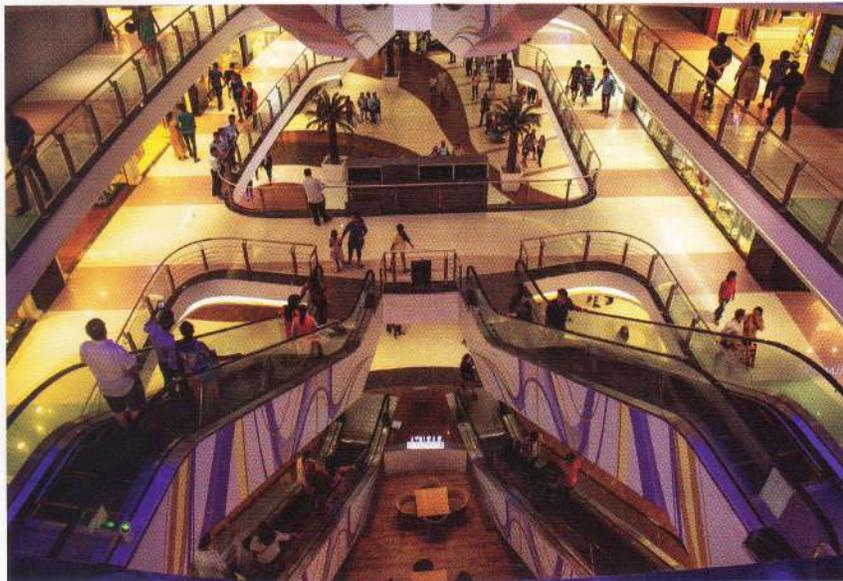
With the growing number of pending cases in the consumer courts and huge delays in providing speedy justice to the consumers for petty amounts, the need of the hour was to bring in a new legislature to empower the consumers. The Consumer Protection Act, 2019 (No. 35 of 2019) was passed by the Parliament and received the assent of the President on 9 August, 2019 and provides for the

protection of consumers and fast-track alternatives so that justice reaches to the aggrieved consumers immediately. The new Act repeals and replaces the older CPA, 1986 and provides mechanisms for making the consumer complaint system more robust. It envisages to remove anomalies and problems faced by the consumers. Innovative methods such as mediation, establishment of Central Consumer Protection Authority, class action suits

etc. would be part of the Consumer Protection Act, 2019. Since the rules of the New Consumer Protection Act, 2019 are yet to be framed and implemented it is time to look at what the new Act would deliver and draw a comparison with CPA, 1986.

Shortcomings in the CPA, 1986

After 33 years of enactment of the CPA, 1986 it is time to revisit its objectives and organisational structure



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and enlist its shortcomings in the present era. In 1986, when the CPA was enacted, a key milestone in consumer advocacy was achieved in India, which provided a legislative framework for better protection of the interests of the consumer by creating a formal but three-tier quasi-judicial dispute resolution mechanism at National, State, and District levels exclusively for consumers. The Consumer Courts were established with the twin objective for speedy redressal of consumer complaints and establish quasi-judicial authorities unlike civil courts to provide compensation to the consumers. But over the years there have been heavy pendency of cases in various consumer courts. Some of the lacuna of the CPA, 1986 are

- a) The CPA, 1986 has become outdated and does not consider rapid changes in consumer marketplaces. Section 13 (3A) of CPA, 1986 states that "every complaint shall be heard expeditiously as possible and endeavour made to dispose of complaint within a period of three months from the date of notice by the opposite party and five months if it requires testing of commodities." But it is seen that due to heavy pendency of cases and frequent adjournments delay in getting justice takes place.
- b) The consumer commissions have been overburdened with pending cases and the buyer-seller contract is tilted in favour of the seller. Further, the procedures are becoming expensive and time consuming.

After 33 years of enactment of the Consumer Protection Act, 1986 it is time to revisit its objectives and organisational structure and enlist its shortcomings in the present era. The Consumer Protection Act, 2019 was passed by the Parliament and received the assent of the President on 9 August, 2019. It aims at protection of consumers and fast-track alternatives so that justice reaches to the aggrieved consumers immediately.

- c) The presidents and members of the consumer courts constitute the backbone of the consumer dispute redressal system. They play a major role in establishing the faith of the consumers in the redressal mechanism. But it has been seen that there are more than 400 posts of President and members in various consumer forums which are lying vacant. The State Governments show less interest in immediately filling up the vacant posts and the issue of consumer protection is not always at the top of any political parties' agenda.
- d) Consumer commissions are functioning with staff deputed from other departments who do not have any experience in judicial practices. It is necessary

to provide intensive training to the members of the Consumer courts before putting them on the job. The present practice is to provide training after assuming charge as a member.

- e) Many times, it is seen that the award ordered by consumer commissions is very meagre and the consumer has to run from pillar to post to get the orders implemented.
- f) There has been lack of proper coordination among the President and members of the consumer commissions for timely adjudication of cases and quite often around ten or fifteen adjournments are allowed.
- g) The President of the National Commission/State Commissions are not empowered to take up suo motu action in consideration of the damages affecting a sizable number of population, e.g., misleading advertisements.

Analysis of the cases disposed by Consumer Courts

According to the data available from the Department of Consumer Affairs (Table 1), more than 4.3 lakh cases are pending in the various consumer courts, which is an alarming figure. When the consumer courts were formed, the main purpose was to provide inexpensive and speedy redressal to consumers, where a consumer could itself plead her/his case in the consumer courts. Since the law was complex in nature, many consumers started hiring lawyers and there were frequent adjournments by

Table 1: Total Number of Cases Disposed by Consumer Forums since Inception (Updated on 5.7.2018)

Sl. No.	Name of the Agency	Cases filed since inception	Cases disposed of since inception	Cases pending	% of total disposal
1	National Commission	122042	103520	18522	84.82%
2	State Commissions	788463	678124	110339	86.01%
3	District Forums	3903706	3605673	298033	92.37%
	TOTAL	4814211	4387317	426894	91.13%

Source: www.nedrc.nic.in



the consumer courts which started delaying the entire adjudicatory process.

Analysis of data regarding number of cases disposed by consumer courts shows that the performance of District Consumer Forums was better as 92.37% cases were disposed of.

Consumer Protection Act, 2019

The objective of the Act is to provide for protection of the interests of consumers and to establish authorities for timely and effective administration and settlement of consumers' disputes.

Some of the highlights of the Consumer Protection Act, 2019 are

- a) The definition of 'Consumer' would include both offline and online consumers. The expressions "buys any goods" and "hires or avails any services" would include offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.
- b) Establishment of the **Central Consumer Protection Authority (CCPA)** to promote, protect and enforce the rights of consumers, to investigate and intervene when necessary to prevent consumer detriment arising from unfair trade practices, and to initiate class action including enforcing recall, refund and return of products. Thus CCPA can act on:
 - i. complaints of unfair trade practices,
 - ii. issue safety guidelines,

- iii. order product recall or discontinuation of services,
- iv. refer complaints to other regulators,
- v. has punitive powers such as imposing penalties,
- vi. can file actions before consumer commissions, and
- vii. Intervene in proceeding in matters of consumer rights or unfair trade practices.

The Central Authority will have an Investigation Wing headed by a Director-General for the purpose of conducting inquiry or investigation under the Act. For false and misleading advertisements CCPA may issue a penalty up to 10 lakh on a manufacturer and endorser and includes online marketing. For a subsequent offence, the fine may extend to Rs. 50 lakh. For every subsequent offence, the period of prohibition may extend to three years. However, there are certain exceptions when an endorser will not be held liable for such a penalty. The CCPA has the authority to direct the removal of a misleading advertisement.

- c) The pecuniary jurisdiction of adjudicatory bodies increased in case of District Commission to Rs. 1 crore, in case of State Commission between 1 crore to 10 crore, and for National Commission, above Rs 10 crore. Further simplification of procedure for filing of complaints

In the Consumer Protection Act, 2019, the definition of 'Consumer' would include both offline and online consumers. The expressions "buys any goods" and "hires or avails any services" would include offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

and online filing of complaints has also been envisaged.

- d) The Bill also lists punitive actions against those who are found to be manufacturing, storing, distributing, selling, or importing products that are spurious or contain adulterants.
- e) Provisions for "product liability" action for or on account of harm caused by or resulting from any product by way of fixing the liability of a manufacturer to a claimant.
- f) Provision for "mediation" as an Alternate Dispute resolution (ADR) mechanism which aims at giving legislative basis to resolution of consumer disputes through mediation, thus making the process less cumbersome, simple, and quicker. This will be done under the aegis of the consumer fora.
- g) Several provisions aimed at simplifying the consumer dispute adjudication process in the consumer fora are envisaged. These include, among others, enhancing the pecuniary jurisdiction of the consumer disputes redressal agencies, increasing minimum number of members in the consumer fora to facilitate quick disposal of complaints, power to review their own orders by the State and district commission, constitution of 'circuit bench' to facilitate quicker disposal of complaints, reforming the process for the appointment of the President and members of the district fora, enabling provisions for consumers to file complaints electronically and file complaints in consumer fora that have jurisdiction over the place of residence of the complainant, and deemed admissibility of complaints if the question of admissibility is not decided within the specified period of 21 days.
- h) E-commerce guidelines would be mandatory under consumer

protection law which would include 14-day deadline to effect refund request. It would mandate e-tailers to display details of sellers supplying goods and services on their websites and moot the procedure to resolve consumer complaints. The e-commerce companies would also be required to ensure that personally identifiable information of customers are protected. Terms of contract between e-Commerce entity and the seller relating to return, refund, exchange, warranty/guarantee, delivery/shipment, mode of payments, grievance redressal mechanism etc. to be displayed to enable consumers to make informed decisions.

There are huge challenges faced by online buyers such as breach of data privacy and security, substandard and duplicate products, phishing, territorial jurisdiction. In case of misleading advertisements, especially digital, the consumer courts or the Consumer Protection Councils at Centre, State, and District level, till now do not have suo motu powers. Only when somebody complains in the consumer forums, action is being taken and also the compensation is given to only the aggrieved consumer who files a case in the consumer court. CCPA

would function on the same lines as the Federal Trade Commission in the USA and investigate into consumer complaints, issue safety notices for goods and services, and pass orders for recall of goods and work against misleading advertisements. Under the CPA, 1986 Central Government or State Governments are empowered to file a legal case against manufacturers if they come across defective products, deficiency in service, unfair trade practice, or a restrictive trade practice. But till date we have found that hardly any case has been filed by the Government suo motu.

Since the adjudication process in consumer courts is slow, setting up of mediation centres at District, State and National Commissions annexed to the consumer courts can play an important role in delivering justice.

Clauses 74-80 in the Consumer Protection Act, 2019 contain provisions for "Mediation" as an Alternate Dispute Resolution (ADR) mechanism. It aims to provide legislative basis to resolution of consumer disputes through mediation thus making the process less cumbersome, simple, and quicker. The mediation centres would work under the aegis of the Consumer Commissions, and the State Government and the Central Government would decide the composition of the mediation cell.

Section 74 of the New Consumer Protection Act mentions that the State Government would establish a consumer mediation cell which would be attached to the consumer courts and each of the regional benches. Every consumer mediation cell would submit a quarterly report to the District Commission, State Commission, or the National Commission to which it would be attached. Thus, every consumer mediation cell would maintain:

- a. a list of empanelled mediators;
- b. a list of cases handled by the cell;
- c. record of proceeding; and
- d. any other information as may be specified by regulations.

The tenure of the panel of mediators would be valid for a period of five years, and the empanelled mediators shall be eligible to be considered for re-empanelment for another term, subject to such conditions as may be specified by regulations. The mediation shall be held in the consumer mediation cell attached to the various consumer Courts (Clause 75).

The Consumer Protection Act, 2019, with its innovative changes, would help in empowering consumers and provide justice to the needy in time. □

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