

Consumer Protection Act, 1986: An Analysis

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1. Introduction:

Manusmriti is also called the Manava-Dharmasastra or Laws of Manu and is considered to be a treatise and a prominent source describing various theories of statecraft duties, rights, laws, conduct, virtues and other subjects in ancient society. Though its primary concern is with matters of practical administration, consumers' protection occupies a prominent place in Arthashastra. It describes the role of the state in regulating trade and its duty to prevent crimes against consumers. However, it is rightly said that the present day concern for consumer rights is not new and that Consumer's rights like the right to have safe, unadulterated and defect-free commodities at appropriate prices has been recognized since ancient times. In ancient India, effective measures were initiated to protect consumers from crimes in the market place. Ancient law gives ably described various kinds of unfair trade practices and also prescribed severe punishments for wrong doers. In medieval period, some rulers developed well organised market mechanisms to monitor prices and the supply of goods to the markets. During the British period, the modern legal system was introduced in India and many laws were enacted to protect the consumers rights. But, when it comes to consumers rights only one thing strikes to our mind is redressal of their grievances. Consumer if face issues relating to any unfair trade practice or deficiency in service he tries his best to overcome on his own at initial stage, but when he fails to get any outcome he knocks the doors of Judiciary.

2. Development :

During the British regime some Acts which related to consumers' interests are: the Indian Contract Act of 1872, the Sale of Goods Act of 1930, the Indian Penal Code of 1860, the Drugs and Cosmetics Act of 1940, the Usurious Loans Act of 1918, and the Agriculture Procedure-Grading and Marketing Act of 1937. These laws provided specific legal protection for consumers and for fifty-five years, the Sale of Goods Act of 1930 was the exclusive source of protection to the consumers in India. Consumer protection was also provided within Indian criminal justice system. The Indian Penal Code of 1860 has a number of provisions to deal with injustice faced against consumers, It deals with offenses related to the use of false

weights and measures and also with the sale of adulterated food items or adulterated drinks. The orthodox legal requirements under the law of torts and contracts forced the policy makers to craft specific legislation to protect consumers. As a result, The Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986, which was specifically designed to protect consumer interests. The CPA was passed with avowed objectives. It is intended to provide justice which is “less formal, and involves less paper work, less delay and less expense”. The CPA has received wide recognition in India as poor man’s legislation, ensuring easy access to justice. However, the CPA simply gives a new dimension to rights that have been recognized and protected since the ancient period. Thus Consumer Protection Act, 1986 was enacted by Parliament in the thirty-seventh year of the Republic of India with Preamble as follows:

"An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith".

In nutshell, In order to protect the interest of consumers, the Act provided consumers an opportunity to address their grievances and speedy disposal of the cases. The Act also provided the establishment of Consumer Protection Councils at all the levels including District level, State level and National level for promoting the awareness of the consumer rights and education to the end users of goods and services. Also, Act provided the establishment of three-tier quasi-judicial machinery in the form of Forums in the District level and Commissions in State and National Level to deal the complaints effectively and speedily.

3. **Applicable legislations:**

I. Consumer Protection Act, 1986:

Chapter I - Sections 1 – 3 Preliminary

Chapter II - Sections 4 - 8B Consumer Protection Councils

Chapter III - Sections 9 – 27 A Consumer Disputes Redressal Agencies

Chapter IV - Sections 28 – 31 Miscellaneous,

After the main Act, 1986 the following Rules and regulations were brought:

II. The Consumer Protection Rules, 1987

Rules 1 to 16 also Schedule I & II alongwith Annexure.

III. The Consumer Protection Regulations, 2005.

Regulations 1 to 26

IV. The Consumer Protection (Procedure for Regulation of allowing appearance of agents or representatives or Non-Advocates or Voluntary Organisations before the Consumer Forum), Regulations, 2014.

Regulations : Chapter I to Chapter IV.

Prima facie of this Act says that it is a quasi-judicial machinery and this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, as per section 13 (4 to 7) the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit and under section 13(5) : every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon. In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

V. Consumer Protection Bill, 2018.

Since passing of CPA in 1986, more than 31 years passed and lots of consumers market philosophy has changed and necessity arose to update the CPA.

The Bill's salient features include establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of

the consumers. The Bill proposes to empower the CCPA to investigate, recall, refund and impose penalties. The Bill provides for product liability action in cases of personal injury, death or property damage caused by or resulting from any product, and mediation as an alternate dispute resolution, making the process of dispute adjudication simpler and quicker. Consumer Protection Bill, 2018 was introduced as under:

Chapter I - Sections 1 & 2 Preliminary

Chapter II - Sections 3 - 9 Consumer Protection Councils

Chapter III - Sections 10 – 27 Central Consumer Protection Authority

Chapter IV - Sections 28 – 73 District, State and National Commission

Chapter V - Sections 74 – 81 Mediation

Chapter VI - Sections 82 – 87 Product liability

Chapter VII - Sections 88 – 93 Offences & Penalties

Chapter VIII- Sections 94 – 107 Miscellaneous

The aforesaid Bill was successfully passed in Lok Sabha on 24th December, 2018 but the same was not passed in Rajya Sabha. Thus, the old Act of CPA, 1986 shall be continued.

4. Judicial Views:

Some of the recent judgements under the perview of the Act:

1. **Advertisement**: Misleading- Acts and conduct of hospital were unfair and deceptive – cost of Rs.1 lakh imposed. Pronouncement of Hon'ble National Commission titled Surya Kant vs Brahmsakti Sanjivani Hospital, I (2019) CPJ 57 (NC).
2. **Agriculture** : Short circuit of electricity in supply lines – Crop damaged – compensation awarded. Pronouncement of Hon'ble Andhra Pradesh SCRDC (CN) page 6A titled as A.P.S.P.D.C.L vs Subramanya Naidu.
3. **Consumer Disputes** : Reference to arbitration – Commission can refuse to relegate parties to arbitration. Pronouncement of Hon'ble Supreme Court of India titled Emaar MGF Land Limited Vs Aftab Singh I (2019) CPJ 5 (SC).

4. **Banking and Financial Institutions Services** :

a. Gold Loan – Default in payment of instalments – eposited gold sold – Loan amount adjusted – prior notice not given – Unfair trade practice proved. Pronouncement of Hon'ble National Commission titled HDFC Bank Limited vs Sharmila Das Gupta 1 (2019)CPJ 159 (NC).

b. Investments collected without any approval of scheme – Maturity amount enied – Deficiency proved- compensation awarded. Pronouncement of Hon'ble State Commission, Punjab titled TATA AIG General Insurance Company Limited vs Manvinder Singh & Anr. 1(2019) CPJ 37 (NC).

5. **Builder:**

a. Delay in delivery of possession – Completion certificate not obtained – compensaton alongwith interest awarded. Pronouncement of Hon'ble National Commission titled Kiran Joshi vs S.M.V. Agencies Pvt. Ltd., I (2019) CPJ 162 (NC).

b. Non-delivery of possession – Refund alongwith interest @ 10% p.a. Directed – compensation of Rs.2 Lakh awarded. Pronouncement of Hon'ble National Commission titled Bathinda Development Authoriy vs R.K.Dawra, I (2019) CPJ 144 (NC).

6. **Medical Negligence:** Military Hospital, expenses borned by employer – Complainants are consumer. Pronouncement of Hon'ble National Commission titled Union of India vs Major J.P.S. Malhi & Ors. And Lt.Col. J.P.S. Malhi & Ors. Vs Apollo Hospita & Ors., I (2019) CPJ 5 (NC).

7. **Insurance cases:**

a. Driving Licence – Validity – repudiation not justified. Pronouncement of Hon'ble National Commission titled Oriental Insurance Co. Ltd., vs Perna Strips I (2019) CPJ 191 (NC).

b. Fire accident – Foul play - Not proved - Repudiation not justified. Pronouncement of Hon'ble National Commission titled Iffco Tokio General Insurance Co Ltd., Vs. Krishan Kumar, I (2019) CPJ 109 (NC).

c. Overloading – Accident claim- Significance and magnitude of violation of conditions is to be kept in mind while deciding on the quantum of insurance claim. Pronouncement of Hon'ble National Commission titled New India Assurance Co. Ltd., vs Ashok Kumar. I (2019) CPJ 96 (NC).

d. Theft of vehicle – No clue regarding the identity of micreants-Repudiation not justified. Pronouncement of Hon'ble National Commission titled Md.Mokhtar vs New India Assurance Col. Ltd., Jharkhand SCDRC (CN).

8. **Jurisdiction : (Pecuniary)** Compensation claimed is added to agreed sale consideration – this commission does possess pecuniary jurisdiction. Pronouncement of Hon'ble National Commission titled Swati Mishra Chaatwal vs Granite Gate Properties Pvt. Ltd. I (2019) CPJ 64 (NC).

9. **Right to Information:** Non-providing of information under RTI Act within time – Complaint not maintainable under CP Act. Pronouncement of Hon'ble National Commission titled Satpal Saini vs Himachal Pradesh State Electricity Board. I (2019) CPJ 60 (NC).

10. **Written statement** : Non-filing – not intentional or deliberate – cost of Rs30,000/- imposed. Pronouncement of Hon'ble National Commission titled L.G.Construction vs Bishnu Pada Guha I (2019) CPJ 111 (NC).

5. Conclusion:

Once Vice-President M. Venkaiah Naidu narrated his experience with a spurious weight-loss advertisement and how he lost money but never got the medicine. Thereafter, Consumer Affairs Minister Ramvilas Paswan promised then that a Bill on consumer protection would be tabled soon, but the same was passed by Lok Sabha, but not passed by Rajya Sabha for the unsaid reasons, best known to them. But, food for thought is that the aforesaid Bill, 2018 not passed in Rajya Sabha, due to political reasons. Then, its very harmful to the nation with these apathetic attitude. Unfortunately, there was disappointment as the Consumer Protection Bill, 2018 was not passed in Rajya Sabha and dream of replacing the three-decade-old Consumer Protection Act, 1986, remains unchanged, which was amended thrice but is still found wanting in tackling the challenges posed by online transactions, and tele-, multi-level, and digital marketing is shattered. Today, the old mechanism requires to be changed at the earliest, otherwise the development of India is at stake, as this Consumer Protection Act, aura is vast and effects the mankind.