



CONSUMER PROTECTION LAW: A PARADIGM SHIFT FROM CAVEAT EMPTOR TO CAVEAT VENDITOR

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“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 of our work. He is the purpose of it. He is not an outsider of our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us the opportunity to do so.”

-Mahatma Gandhi

ABSTRACT

In this 21st century customer or consumer is the king, shopper is the sovereign and buyer is the boss. That is why the whole consumer jurisprudence roams around its protection. In this paper, the author introduces the subject with the meaning and definition of the term consumer. It continues with an analysis of different types of consumer rights. Evolution and historical aspect of Consumer Law was studied. Judicial analysis of the concept of “caveat venditor” and how it replaced the existing doctrine of ‘caveat emptor’. The role of judiciary in upholding the rights of the consumer was also analysed under the heading judicial trend. Consequently, this

paper recommends spreading awareness to the right to speedy and cheap means of settling consumer disputes is the need of the hour.

Key words: Consumer protection, Consumer rights, Dispute redressal, CCPA

INTRODUCTION

Consumer protection is a self-sufficient complete legislation in its own sense. It came with the objective of protecting the rights of the consumers.¹ Now the question comes who is a consumer, and how he is different from any buyer? According to the Consumer Protection Act, a consumer is a person who buys any goods or avails any services for consideration.² So in one sense the term ‘consumer’ is wider than buyer as it includes services as well in its per view. But as per the definition³ it is narrow as it excludes those buyers who purchase it for commercial purpose. After the concept of consumer, the next important aspect is their protection. The whole enactment from the very beginning encircles the protection of certain rights of consumers. These rights are discussed below:

Right against hazards

“The right to be protected against the marketing of goods, products or services which are hazardous to life and property”⁴

Central Consumer Protection Authority formed under the Consumer Protection Act, 2019 has additional power to call back and

¹Preamble to The Consumer Protection Act, 2019, no. 35 of 2019

² Section 2(7), The Consumer Protection Act, 2019

³ ibid

⁴ Section 2(9), Consumer Protection Act, 2019



withdraw goods and services from the market which are hazardous in nature.

For Example: - Manufacturing defects in electrical appliances, Domestic LPG cylinder, Pressure cooker etc.

Right to information

Every consumer has a right to information against unfair trade practices regarding the goods he is purchasing or service he is availing.

Ex; - consumer should be made aware about the quality, quantity, potency, purity, standard. Price of goods, products or services must be mentioned.

Right to excess variety at a competitive price

Consumer should have freedom to choose from variety of goods and services available at a competitive price.

Ex:-Seller or service provider can not pressurize the consumer to buy a particular brand.

Right to be heard at appropriate forum

It is a natural right. The legal maxim stands for it is ‘Audi alteram partem’ means listen to the other side. If the consumer is suffering from any defects in goods and deficiency in services, he has every right to be redressed at proper platform.

Ex:-Consumer law provides for a three tier system of grievance redressal at district state and national level. Additionally online

platform for lodging complaint is also available.

Right to be redressed against UTP and RTP

Every consumer has right to seek for redressal against unscrupulous trader or any trader who practices any unfair trade (RTP) or restrictive trade (RTP).

Ex:-Redressal against replacement of original parts at a service station.

Right to awareness regarding consumer rights

This right is popularly known as ‘Right to consumer education’. The consumer has every right to acquire knowledge about all the consumer rights, relief available in case of any defective goods or deficit service etc.

Ex: -Government is using mass media to spread awareness amongst general consumers.

METHODOLOGY

Author has adopted pure doctrinal research methodology. In this paper secondary data source is used. It has also utilise historical and analytical methods.

OBJECTIVES

To explore the evolution of consumer rights in India

To define and understand the meaning of term ‘consumer’ and his rights.



To analyse the law relating to consumer protection in India

To understand how the concept of ‘caveat emptor’ gradually changed to ‘caveat venditor’

RESEARCH PROBLEM

Irrespective of a strong consumer protection law consumer are still suffering from defective goods and deficient services.

Despite of effective consumer protective law unfair trade practices are rampant and is not decreasing

RESEARCH QUESTION

Whether the existing consumer protection law in India is adequate to protect the rights of consumers?

Whether the law is adequately fulfilling its objectives in creating awareness amongst common consumers about their rights?

HISTORICAL ASPECT AND EVOLUTION

Consumer protection has a very interesting origin. In India it started with holding the hand of a television serial named “Rajni”⁵. Rajni was named after a next door lady. The story was about how a house wife fight against consumer grievances. In each episode the serial used to deal with a new consumer issue. It was very popular in Doordarshan era of Sunday soap opera. The title role of Rajni, can be called as a consumer

activist, was played by Late Priya Tendulkar. It was not a co-incident that within a years Consumer Protection bill was passed in Indian parliament.

Till the mid of 80s it was a seller’s market. Means it is the buyer who has to compete with other buyers to purchase a product. Even till today when we book a car or flat with advance payment much before getting the actual delivery is a tradition of that 80s. It was always the buyer’s responsibility to cheque the quality and fitness of the product. Only in case of gross negligence buyer used to be held liable. Enactment like Drug Control Act, 1950, Prevention of Food and Adulteration Act, 1954, MRTP Act, 1969, Law of Torts, Provisions of Indian Penal Code, The standard of weights and measurement Act, 1975 etc. are some of the fore runner of consumer Act.

JURISPRUDENTIAL ANALYSIS

The root of the attempt to legislate consumer affairs lies in commercial Acts like Indian Contract Act, 1872 and Sale of Goods Act, 1930. The doctrine of ‘Caveat Emptor’ under the laws relating to Sale of goods means ‘let the buyer beware’. When the goods are in open market it is for the buyer to make a proper selection. Because he only knows about his requirement and whether it will serve the purpose for which he is purchasing it. Later on he cannot blame the seller for a bad purchase if any, when he has made the choice relying on his own judgment. This is an exception to the principle of implied condition and warranty.⁶

⁵ Basu Chatterji’s Rajani on Doordarshan becomes a movement, India Today, 03 Jan 2014

⁶ Section 16 of Sale of Goods Act, 1930: Implied conditions as to quality or fitness. There is no implied

warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except in case of Implied condition and warranty. Provided that, if the buyer has



Where as the doctrine of ‘Caveat Venditor’ is just the counter or opposite of it. It means ‘Let the seller beware’. For the purpose of promoting consumer welfare it is shifting the responsibility toward the seller. The Enactment of Consumer Protection Act, 1986 was epoch making. Because it has altogether altered the judicial principle of ‘caveat emptor’ to ‘Caveat Venditor’. In the year 2019, when the new consumer Act was in the verge of enforcement, state consumer commission, Jaipur made a land mark decision. An appeal was dismissed against shoe seller BATA for charging Rs. 2 against a carry bags containing the company logo.⁷ The penalty amount of Rs. 10,000 was remain valid. The formation of consumer forum was path breaking in comparison to the tradition of formal anglo-section judicial platform

ANALYSIS OF CONSUMER PROTECTION ACT, 2019

Just like the previous Act of 1986, the new Act of 2019 also has three tier dispute redressing machinery at district, state and national level. Previously at state and national level consumer commission was there.⁸ At district level only ‘consumer forum’ was the dispute redressal agency but now all the three are consumer commission only.⁹

Digitalization and E-commerce

Keeping pace with rampant digitalization in every sphere, the Act was made applicable to

examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

⁷ Times of India, Nov 9, 2019

both direct as well as online transactions. The definition of consumer was expanded to include online purchaser of products and services. Similarly under the new enactment seller includes e-commerce platform as well. Now e-filing consumer complaint is also allowed. Even e-hearing and examination of parties through video conferencing is made possible with the Act.

Jurisdiction

For the purpose of ease in filing complaint work place and residence of the consumer were included by expanding the territorial jurisdiction.¹⁰ The pecuniary limit was also enhanced from twenty lakh to one crore for district authority, above one crore up to ten crore for state authority, any amount beyond ten crore for national commission. Hence a clear enhancement in the scope of each dispute redressal authority is observed.

Product Liability

The liability for defective product was there not only against the seller but more on the manufacturer and marketing partner. Regarding this the most interesting part introduced vide the new Act is the exception to this product liability. They will not be liable if the harm caused due to the misuse in the part of the consumer himself¹¹.

⁸ Chapter III, Consumer Protection Act, 1986

⁹ Chapter IV, Consumer Protection Act, 2019

¹⁰ Section 34(2)(d), Consumer Protection Act, 2019

¹¹ Section 87(1) Consumer Protection Act, 2019



Central Consumer Protection Authority(CCPA)

CCPA was created with immense power in its hand to serve the actual purpose of the Act i.e to fulfill the objective of protecting the consumer rights.

Unfair Trade Practice(UTP) ,Misleading advertisement & Penalty

Abroad definition of UTP is included in the new enactment. To curb the menace of misleading advertisement CCPA was granted with wide powers.CCPA can impose fine

Celebrity endorsement

The Act requires any celebrity while endorsing any product or service must exercise due diligence ,regarding the truth of the claim.But this provision has some counter arguments. As he is not an expert in the field so it's not possible for him to exercise or give expert opinion regarding the quality of performance of any goods or services. rather it's causing extra burden on the manufacturer because there is every possibility that the celebrity endorser will charge the probable penalty from the manufacturer itself Otherwise also the amount of penalty is much lesser than the charge these high profile celebrities are charging from the manufacturer.

Alternate Dispute Redressal

The Act(Chapter V,Setion 74 to 81) provide for mediation as part of alternate dispute

resolution system for easy and speedy disposal of consumer dispute.

JUDICIAL TREND

The role of judiciary is always proactive in upholding consumer rights. Some of these landmark judgments discussed here.

Spicejet limited, Gurgaon v. Sanjay Rahar¹²

National commission held that charging transaction fees, against directions is a violation of consumer rights.

Metco Export International v. Federal Bank Limited and others¹³.

Complainant had availed banking services for forwarding certain documents to a particular destination.National commission held that availing this service is not an activity directly leading to profit.Thus, the Complainant is a consumer.

Spring meadows hospital v. Harjot Ahluwalia

The court held that it is justified to claim compensation by both the child and his parents for medical negligence, where the child was in vegetative state due to medical negligence.

Tarun Kumar Ghai Vs Malibu Estate Pvt Ltd, ¹⁴

This case dealt with inequitable agreement. A builder was forcing penal interest, but, he

¹² 2017 SCC OnLine NCDRC 810.

¹³ 2018 SCC OnLine NCDRC 1095.

¹⁴ NCDRC, 2008, CPI 309



does not paying any compensation for delayed completion. It is no fair play. The builder was asked to pay interest.

Bank of India v. Mustafa Ibrahim Nadiadwala¹⁵

Original title deed was deposited with the bank as a security for loan, which was lost from Bank custody. National Commission upheld the decision of the State Commission and awarded compensation for mental agony to the consumer along with cost of litigation.

Awaz & others Vs RBI & Others, 2007,¹⁶

Charging of interest in excess of 30% shall be considered unfairly high rate of interest. If such rate is charged from the credit card holders by the banks for the failure to make full payment on due date are paying minimum amount due would amount to unfair trade practices.

Karnataka Power Transmission Corporation v. Ashok Iron Works Private Limited, on 9 February 2009

It was held that private corporations are now classified as 'persons' and the electricity supply is a service under the Act. Complaints about defects can then be referred to as a customer redressal forum for this kind of service.

CONCLUSION & RECOMMENDATION

After analyzing different aspects of consumer law following findings were observed, First of all present consumer law is a well

structured, complete piece of enactment. So no need of any additional Act. Existing consumer law is adequate in the present scenario. Otherwise also plethora of legislations won't serve any purpose unless properly implemented.

Secondly political will is there in favour of it. As government agencies are found using different media to spread awareness about the consumer redressal mechanism. Finally in the era of digitalisation and e-Commerce strong Consumer Protection law at par with modern technology was required. Accordingly academicians and policy makers were giving immense importance to it from the consumer's perspective.

In spite of strong legislation, political will and effective redressal mechanism, enforcement about consumer rights is lagging behind. Even though spreading awareness amongst common consumers is one of the most important objectives of the Act, it is yet to achieve the desired result. The slogan "JAGO GRAHAK JAGO" has a long way to go. Because rights and duties always go side by side. Only talking about the rights without responsibility won't do. Customers should be made more responsible as a consumer. So it can be concluded that the consumers should be made better aware through innovative ways about their rights as well as responsibilities. And the innovative way could be the way the act started its maiden journey, through visual media. Now the Sunday only soap opera could be replaced by social media and internet. When the consumers will arise and aware in true sense of the term actual purpose of the law will be served.

¹⁵ 2016 SCC OnLine NCDRC 2365.

¹⁶ NCDR (CCNo.51/2007)