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NEED OF THE HOUR - CONSUMER PROTECTION ACT, 2019

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ABSTRACT

With the advent of technology and the growth of e-commerce, consumer India is changing drastically. The access to technology, awareness of power and utility that it entails has certainly transformed the mindset of the Indian Consumer, both in rural and urban India. Education, Information Technology, Communication and Entertainment are now the major facets of creating and providing services. There is a huge increase in social mobility, endless access to technology and the need for convenience while buying and availing services among the consumers and these trends come along with challenges, the most crucial one is protecting the rights of the consumers. C.K. Prahlad once remarked that" in order to see the future and not miss the fundamental changes that are about to happen, one needs to look at all the weak signals collectively- signals which when missed individually can easily be dismissed as inconsequential but when viewed collectively give a clear message of imminent change." Applying this to consumer India, the article, therefore, aims to convey that as the consumer market in India is evolving with time, the law regulating this market has to evolve as well, and replacing the 33-year-old Consumer Protection Act, 1986 by enacting the Indian Consumer Protection Act, 2019 was the need of the hour. The Indian Consumer Protection Act, 2019, is the act that the Indian Consumer needed. This article seeks to explain the background and elaborates the salient provisions included in the Consumer Protection Act, 2019 which will prove to be very beneficial for the Indian consumer, given that the mentioned provisions are effectively enacted at all levels.

Keywords - *Indian Consumer, Consumer Protection, Buyers, Sellers, Manufacturer, Consumer Protection Act, 2019, Consumer.*

INTRODUCTION

“Nothing breeds the desire to consume more than consumption”-Rama Bijapurkar

India, a nation of 1.2 Billion people is the most varied market in the world owing it to the regional differences in culture, lifestyles and preferences. More importantly, today’s time is driven by technology and modernization. With the advent of e-commerce and online shopping, the consumers have far evolved and expect their shopping experience to be uninterrupted across every channel, whether it’s a brick and mortar store, e-commerce website, a mobile app, or even a phone

call. This shift in our country drives consumerism at the national, institutional and individual levels and it is this shift that has led to amendment in the Indian Consumer Protection Act, 1986 and the enactment of the Indian Consumer Protection Act, 2019. In the backdrop of an evolutionary time along with the day to day disruptions in the consumer sector, it is essential to understand the law regulating the changing consumer behavior in India.

THE CONSUMER PROTECTION ACT, 2019:

On July 20, 2020, The Consumer Protection Act, 2019 came into force. Before the coming of this act, the Indian Consumer Behavior was regulated by the Indian Consumer Protection Act, 1986. The CPA, 2019 seeks to revamp the process of administration and ensure timely settlement of disputes. The salient changes in the act are as follows:

Definition of Consumer:

A consumer is defined as a person who buys any goods or avails a service for consideration. This definition is further expanded and the expression ‘buys any goods’ ‘hires and avails any services’ is further explained to include offline and online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.¹

E-Commerce:

The term E-Commerce is now defined as buying or selling goods or services including products over digital or electronic networks.²

Prior to this, the consumer protection law recognized several unfair trade practices but was not inclusive of the failure on the part of the businesses in providing adequate disclosure of information regarding the address of the supplier, characteristics of goods and services, delivery costs, withdrawal, etc in case of distance selling. The major reason for the lack of confidence in electronic transactions lies in the anonymity of parties to the consumer contract. The parties to an online

¹ Section 7, Consumer Protection Act, 2019

² Section 16, Consumer Protection Act, 2019

transaction do not encounter each other during the transaction unlike in a ‘brick and mortar’ model. This in turn results in greater risks of fraud, problems relating to the delivery, return of goods, etc.³

One such issue came up before the National Consumer Redressal Commission was that of “**Rediff.com India Ltd v/s Urmil Munjal**”⁴ wherein the consumer wanted to return the goods delivered by the online shopping website and claim a refund. But there was no information regarding the return policy, which could provide the details of the address to which the products are to be returned. As mentioned in the terms and conditions, the online portal was the facilitator between buyers and the sellers and, it was the duty of the facilitator to inform the complainants on how the goods are to be returned to the seller. The court held that the shopping website was acting as the means of communication between buyers and sellers, bringing into existence contracts of sale and purchase of movable goods. The online portal was therefore held liable on the grounds of ‘deficiency in service’ for not providing sufficient information.

In the absence of any specific laws governing E-Commerce in India, all the matters relating to it were taken under the purview of the ‘Deficiency in Service’ or under ‘Unfair Trade Practices’ as per the previous act. Therefore, with the growth of e-commerce, consumer cases increased as well, which mostly involved deficiency in services and unfair trade practices. The need for transparency was felt which further resulted in the inclusion of rules relating to e-commerce under the purview of the consumer protection act.

Section 94 of the CPA, 2019 empowers the Central Government to take measures for the purpose of preventing unfair trade practices of e-commerce entities. Expanding the scope of this section **The Consumer Protection (E-Commerce) Rules, 2020 (“The Rules”)** were notified by the central government on July 23rd 2020. The rules enlist the duties and liabilities of an e-commerce entity as well as the seller conducting the sale on an e-commerce market place. There are certain mandatory disclosures that have to be made and these include furnishing basic information by the e-commerce entity and sellers such as their legal name, address, details of their website, important contact details and details of the importer. It further imposes that the entities should lay down all

³ E-Consumer Protection in India: Trends and Challenges.

⁴ Revision Petition No. 4656 of 2012

the details relating to guarantee, warranty, return, refund available payment methods and further enable the consumer to make an informed choice. This mandatory disclosure of information has to be done in an unambiguous manner and therefore, give the consumer a clear idea about their purchase.⁵

Central Consumer Protection Authority:

The act provides for the establishment of a Central Consumer Protection Authority to regulate matters relating to a violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of the public and consumers and to promote, protect and enforce the rights of consumers as a class.

With regard to misleading advertisements, the act lays down the punishments for the same. Any manufacturer or service provider who causes false or misleading advertisement which is prejudicial to the interests of the consumer shall be punished with imprisonment which may extend to two years and a fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment and fine which may extend to fifty lakh rupees.⁶

This provision is a major step towards protecting consumers from false and deceptive information in the form of advertisements. Not only the seller but also the manufacturers and publishers of the advertisements have to be aware of what they claim their product to be and whether the claims made by them with regard to their services and goods are accurate. The intent of fooling the buyer into investing money in products with false claims now has its own legal repercussions.

Consumer Dispute Redressal Commission:

The most important feature of the CPA is the provision for setting up three-tier quasi-judicial machinery popularly known as the ‘Consumer Redressal Commission’ at the national, state and district levels. The CPA, 2019 has made certain changes and expanded the jurisdiction of these

⁵Flipping the cart: Consumer Protection (E-Commerce), Rules,2020

⁶ Section 87, Consumer Protection Act, 2019

commissions. The District Commission can now hear cases where the value of goods or services does not exceed One crore Rupees, with the State Commission, the value should exceed One crore but not Ten crore Rupees and with the National Commission, the value of goods or services paid as consideration should exceed Rupees Ten crore.

The CPA, 2019 allows the complainant to file a complaint in a commission, within local limits of where the complainant resides or personally works for gain. It shall allow the complaints to be filed electronically and also permit hearing or examination of parties through video conferencing in certain circumstances.

Mediation:

Along with expanding the jurisdiction of the redressal forums, Section 37(1) of the said Act empowers the commission to direct the parties to settle the dispute through mediation if, at any stage of the hearing, it appears to the commission that there exists a possibility of settlement.

If the parties give their consent to settle the dispute through mediation, the District Commission shall refer the matter to mediation within five days of receipt of written consent from the parties.

The importance of inserting the provision of Mediation for the settlement of consumer disputes can be understood from the Judgment of The Supreme Court of India in “**M/s Afcons v. M/s Cherian Varkey Construction Company Ltd. and Other**”,⁷ wherein while enumerating the matters that are suitable for Alternate Dispute Resolution (ADR), held that *all consumer disputes including disputes where a trader/manufacturer/supplier/service provider is keen to maintain his business/professional reputation and credibility or product popularity can be referred to ADR.*⁸

Therefore, the act provides for the establishment of a consumer mediation cell by the state and central government to be attached to each of the district commissions and state commission as well

⁷ Civil Appeal No. 6000 of 2012

⁸ E-Consumer Protection In India: Trends and Challenges

as a Consumer Mediation Cell to be attached to the National Commission and each of the regional benches.⁹

The expanding of the jurisdiction of redressal forums and the inclusion of mediation for the settlement of disputes is a positive change as it will make the redressal forums more accessible and result in timely settlement of disputes.

This reflects the view of the Apex court in the case of “**Anita Kushwaha v. Pushap Sudan**”¹⁰ wherein the apex court held that *access to justice is an invaluable human right* and laid down four main facets of the essence to access to justice which are (i) The State must provide an effective adjudicatory mechanism ; (ii) The mechanism so provided must be reasonably accessible in terms of distance; (iii) The process of adjudication must be speedy; and (iv) The litigant’s access to the adjudicatory process must be acceptable.

Product Liability:

The concept of Product Liability imposes a responsibility not only on the seller but the manufacturer as well. According to this principle, the above-mentioned parties would be strictly liable for any personal injury or property damage to the consumer.

The supreme court of California for the very first time held the manufacturer liable in the matter of “**Greenman v. Yuba Power Products, Inc.**”¹¹ The court’s purpose was “to ensure that the costs of injuries resulting from defective products are borne by the manufacturer that put such products on the market rather than by the injured persons who are powerless to protect themselves.”¹²

On the other hand, the law relating to product liability in India is constantly evolving. Prior to the Consumer Protection Act, 2019 there was no proper statute relating to this particular provision. In

⁹ Section 74, Consumer Protection Act, 2019

¹⁰ Transfer Petition (C) No, 1343 of 2008

¹¹ L.A. No. 26976. In Bank Jan 24, 1963

¹² India: An analysis of Strict Product Liability

the matter of “**Airbus Industries Vs. Laura Howell Linton**”,¹³ the Hon’ble High Court of Karnataka has conveyed that *the Doctrine of strict/product liability is not presently recognized in India.*

Therefore, with the advent of the Indian Consumer Protection Act, 2019, a proper provision of Product Liability was recognized in Chapter VI of the said act. Sections 82- 87 lay down the various aspects of the applicability of product liability in India. The CPA, 2019 defines product liability as to the responsibility of a product manufacturer or product seller of any product or service, to compensate for any harm caused by such defective product manufactured or sold or by a deficiency in services relating thereto. A product liability action can be filed against a ‘product manufacturer’ or ‘product service provider’ or product seller’ as the case may be.

The liabilities of a product manufacturer, a product service provider and a product seller are laid down in Sections 84, 85 and 86 of the said Act respectively. Along with liabilities, there are certain exceptions which are also listed under section 87 of the Act.

The inclusion of the above-mentioned provisions in the Consumer Protection Act, 2019 has made it a very powerful tool for the protection of the rights of the consumer. The Indian concept of consumerism which began with the rule of caveat emptor wherein the buyer alone was responsible for the purchase made has now evolved and it goes even beyond the rule of caveat venditor by imposing the liability not only on the seller but each and every entity involved in the consumption chain.

CONCLUSION

Consumer Protection primarily involves two major components. Firstly, the consumer will get what they expect and second that if things go wrong, the consumer can seek a remedy. The enactment of the Consumer Protection Act, 2019 is an essential step towards creating a much more accountable and transparent space for consumers. But the real test lies in the effective applicability

¹³ ILR 1994 KAR 1370

of the act at all levels and making the consumers aware of their rights. Given that the provisions are strictly abided by, the Consumer Protection Act, 2019 is a very strong tool which will actually protect the consumers and hold the ones at fault accountable.

The act is a staunch example of how the law has to be amended as the time and way of life change and at the same time protect the very essence and purpose of the original act.

It is therefore time that along with the buyers, let the sellers, manufacturers and service providers be aware.

References:

Books:

We Are Like That Only: Understanding the Logic of Consumer India- Rama Bijapurkar

Research Papers and Articles:

1. Unravelling the Indian Consumer- Deloitte
2. E-Consumer Protection In India: Trends And Challenges
3. Flipping the Cart: Consumer Protection (E- Commerce) Rules, 2020
4. Product Liability under the Consumer Protection Act, 2019: Let the manufacturer/seller beware
5. India: An analysis of Strict Product Liability