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ANALYSIS OF CONSUMER PROTECTION ACT 2019 – A CRITICAL APPRAISAL

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ABSTRACT

The concept of consumer protection is a thought as old as human civilization. Protecting the buyers' interests is amongst the prime considerations of the business. According to Mahatma Gandhi consumer is giving an opportunity for the businesspersons to serve him and he is the ultimate purpose of the business and we can even go to the extent of saying that according to certain interpretations of some Indian traditions a customer/consumer is equivalent to God. Consumer protection has been a part of the responsibilities of the rulers in India even before 1947 it was also implemented in other ways. An important legislation in this field was the Trade Practices Act, 1974 which came into existence on 1 October 1974. But a formal consumer protection law, which purely focuses on consumer protection, was only enacted in the year 1986 in India. The consumer movement became important in the early and middle of the twentieth century and it resulted in formulation of robust consumer protection Acts in many countries. United nation Organization guidelines were the basis for formulation of consumer protection policies and measures in many developing countries including India. Consumer Protection Act 2019, that was passed in Parliament in 1986, was much more detailed, comprehensive and effective in comparison to other consumer protection Acts in various countries. This paper is an attempt to examine to be discussed **“Analysis of Consumer Protection Act 2019- A Critical Appraisal”**

Keywords: Consumer Protection, Consumer Rights, UNO Guidelines, Consumer Movement, Conscious Development, Protection Law, Business Frame Work.

Introduction

Statement of the Problem

“It is not employer who pays the wages. Employers only handle the money. It is the customer who pays the wages.”

Henry Ford,

A familiar Business Magnet

Consumer Protection is a socio-economic day to day activity that is to be carried out by government and business with a prime objective of protecting interests of consumers and their fair satisfaction. It is the prime responsibility of the government to protect the rights and interest of consumers through formulating suitable policies, laws and administrative framework. Different acts and laws were incorporated to protect the consumers. But Consumer Protection Act 1986 (CPA 1986) is considered as a milestone in the history of India for consumers right. This paper examine the background and evaluation of Consumer Protection act over a period of time. This study is based on secondary data. This paper analyses the background of CPA 1986, its implementation, post implementation, changes and journey. Consumer rights are generally a refer laws that give powers to consumers against exploitations and misconduct, misinformation & misguide by producers and sellers and force them of goods to protect interests of consumers. These laws have come into existence through a series of legal disputes in India, and have been shaped by the result of those cases.

Consumer Protection in India

The concept of consumer protection against unscrupulous, unfair and unethical malfunction practices and safeguarding the interest of consumers was a part of Indian culture, business and administration for centuries in the ancient times. References to it can be seen in Ancient Indian Dharmas like Manu Smriti (800 BC- 600 BC), The Yajnavalkya Smriti (300 B.C. - 100 B.C), The NaradaSmriti (100 A.D.- 200 A.D.), The Brihaspatismriti (200A.D.- 400 A.D.) In the KatyayanaSmriti (300 A.D.- 600 A.D) were explained the living conditions of the people of that time and were basis on the Dharma to be followed at that time. They were even the premise for the system that is being followed currently. In India, Manu Smriti was one of the most influential texts that dealt with various consumer matters. Arthashastra of Kautilya is considered as one of the oldest and a very effective book on trade and commerce in ancient India. Kautilya (Chanakya) has mentioned different punishments to be given to sellers who involve themselves in different kinds of exploitations, and wrong measures. The consumer protection was a common part of the ancient laws.

After industrial revolution and vast development in international trade different varieties of goods were available in market to fulfill the needs of consumers...the trade and commerce developed by advertising the product through different media. With the help



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of advertisements, demand for goods increased enormously which also accompany, malpractices of quality and potency in making of the goods and deficiency in services. The aggrieved consumers were protected from these defective goods, adulterated food and substandard articles by the different civil laws available in the country like civil procedure code 1908, Indian contract act 1872, sale of goods act 1930, the standards weights and measures act 1976 etc; ...but the redressal for the grievances was just a piecemeal, and consumer were in vulnerable position because of lengthy time consuming civil court procedures to get justice over the years.

Thus, of a separate Consumer protection act 1986 was enacted. This pioneer step towards the protection of consumer rights was a welcome measure to protect consumer from unfair trade practices and to give quick redressal of the grievances through quasi judicial bodies at different levels at district forum, state forum and central council...at minimal charges were established. This consumer protection act 1986 has amended so many times as per the needs of the society... in 1991, in 1993 and. In 2002....still there was lacunae in the act as per the changing technologies to combat with the necessities of trade.

Now the world has become a global village...innovations of new technologies...and online trading. Digitalization of every trade changed the scenario and pace of consumer's ambit...thus a need to make changes in consumer protection act 1986 was noticed....instead of inserting so many amendments to the old act the government of India enacted a new consumer protection act 2019 to pave the way for protecting the consumers rights from every nook and corner. There were only 31 sections in 1986 act divided into 4 chapters. But the new consumer protection act of 2019 has 107 sections divided into 8 chapters was enacted on 9th August, 2019 by the parliament...and consumer protection act 2019 came into force on 20th July of 2020.

Medieval period and Pre-independence

During the medieval period Muslim kings who ruled India, like Alauddin Khilji, Sher Shah Suri, and Akbar etc., thought about protecting the shoppers and consumers and they enacted strict laws for the same. They introduced weights, measures standardization process.

Post Independence

After independence, many laws were enacted in India for safeguarding innocent customers from unfair and restrictive trade practices sort of a false and dishonorable description regarding the character and quality of the goods exaggerated statements concerning their power and efficiency, false weights and measurements and obstruction of capital and resources into the stream of production. The Acts that were enacted and covered the whole of the Republic of India are given below-

- The Drugs Control act, 1950
- The Industries (Development and Regulations) Act, 1951
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Prevention of Food Adulteration Act, 1954
- The Essential Commodities Act, 1955
- The Trade and Merchandise Marks Act, 1958
- The Monopolies and Restrictive Trade Practices Act, 1969, Competition Act 2002
- The Cigarettes (Regulation of Production, Distribution, and Supply) Act, 1975
- The Standards of Weights and Measures Act, 1976
- The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980
- The Standards of Weights and Measures (Enforcement) Act, 1985
- The Bureau of Indian Standards Act, 1986

But of these Acts weren't as effective, focused and did not cater to needs all sections of the population. There was a need for a focused and strong law to ensure for better protection of the interests of shoppers and consumers and to save them from the evils of unfair trade practices and for this the Protection Act -1986 was enacted by Indian Government. The various amendments in this Act unto 2019 give it more teeth and power to consumers but do not tamper with the basic spirit of the Act of 1986.

The Consumer Protection Bill, 2015 And 2019 Highlights Of The Bill.

- This Bill replaces the CPA, 1986. The Bill enforces consumer rights, and provides a system for redressal of complaints regarding defect & fraud in goods and deficiency in services.
- Consumer Dispute Redressal Commissions will be set up at the district level, state level and national level for adjudicating consumer complaints easily.



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- This Bill maintain a Consumer Protection system to investigate consumer complaints, issue a safety notices for goods, Products& services, and pass orders for recall of goods and against misleading advertisements in society.
- If a consumer suffers an injury from a defect in a goods, they may file a claim of product liability against the manufacturer. The consumer must establish 7 conditions in order to prove such a claim.

Key Issues and Analysis

- The Bill empowers the central government to supervise the functioning of, and issue binding directions to the district, state and national consumer redressal commissions. This could have an effect on the independence of those quasi-judicial bodies.
- The District Commission, a quasi-judicial body, may be headed by a District Magistrate rank officer, who is part of the executive. This could violate the principle of separation of powers between the judiciary and government.
- The National Commission of consumer protection act headed by a judicial member and comprising at least 15 technical or judicial members, who will examine complaints on questions of law. This could contradict a Supreme Court judgment that questioned the ability of such technical members.
- In order to claim products or goods liability, a claimant must establish four kinds of defects in the product, the injury caused from it, and that it belonged to the manufacturer. The applicant should additionally establish that the manufacturer had information of such a defect. It may be argued that the conditions to ascertain a product liability claim area unit unreasonable.
- The Bill defines goods liability to include defects in goods and deficiency in services. However, the conditions to be evidenced to say product liability don't embrace conditions for services. It is unclear however a client will claim product liability for deficiency in services below the Bill.

Provision In Consumer Protection Act

The first Bill to protect the consumers rights, passed after Independence India was Drug Control Act 1950. It was implemented by Industries & manufacturing sector (Development and Regulation) act, 1951, The Indian Standards Institution (Certificate Marks) Act 1952 and Drugs and Magic Remedies act 1954. Though these acts were intended to protect consumers, these acts did not achieve the desired results and its was not too effective.

It was the Prevention of Food and food products Adulteration act 1954, that was made every attempt to protect the consumers. There were detailed provisions for analysis of food, Quality, Quantity, giving warranty by manufacturers, distributors and dealers, the disclosure of names by the vendors, food poisoning, the summary trial of cases, forfeiture of property, etc. The Act was enacted to eradicate the anti-social people & food processor of food adulteration and ensure purity. The central government of India and all state governments framed rules with regard to Central Food Laboratory, Standard of quality, public analysts and inspectors, ceiling, fattening and dispatch of samples, manufacturing process, coloring matter, packing and labeling of foods, prohibition and regulating sales, conditions for sale and license, preservative, poisonous metals, and solvent-extracted oils and edible flour etc. After implementation of this Act, Essential Commodities Act was enabled to extend to control the production, supply, and distribution of certain essential commodities.

MRTP Act, 1969

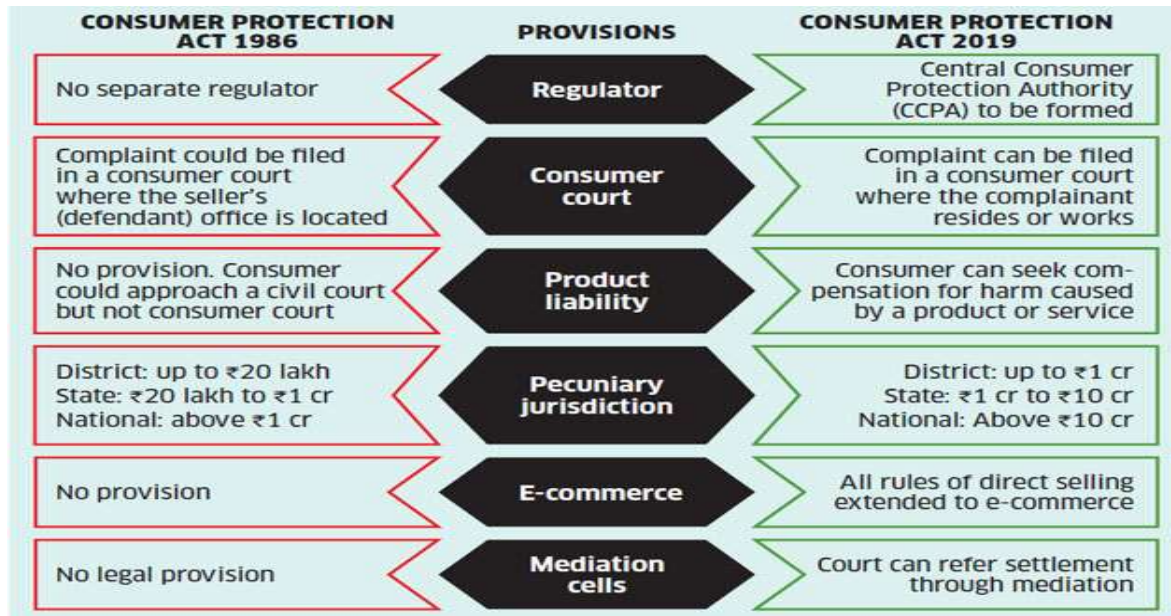
Another important measure taken by Indian government to protect the consumers was Monopoly in market and Restrictive Trade Practices Act (MRTP Act) 1969. It was passed by Parliament (Lower& Upper House) on the recommendations of Mahalanobis Committee Report, 1954, Justice K C Gupta Commission Report, 1965. It came into enforcement on 1st June 1970. The Act was enacted in order that there wouldn't be any concentration of economic power as a results of financial system operations, and prohibition of Monopoly and restrictive trade practices. To accomplish the aims and objectives, there were provisions for the establishment of MRTP commission to enquire into monopolistic and restrictive trade practices and to grant a temporary injunction and compensation. The Act was amended in 1982, 1984, 1985 and 1986.

Other Acts

The legal relationship and disabilities between the buyer (Consumer) and seller were by and large regulated by Law of Contract (1872) and Sale of Goods Act (1930). Consumers were unable to avail these acts when they had some grievances related to product. Law of Torts and Provisions of IPC 1860 were also applied to protect consumers rights. After Independence, there were around 40 legislations were enacted or strengthened to protect the consumers interests, which included some of the British laws. But because of inadequacy in their implementation and improper coverage of consumer's rights and redressal through the prevailing civil court system was cumbersome, lethargic and defendant, none of them could able to protect the consumers against exploitation.



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Consumer Protection In The World

The trend of the globalization is market driven by new technologies and advances in product selling and repair delivery and is that the continued retreat of Governments in several nations from ancient sorts of regulation the market place. during this regard Foreign Direct Investment (FDI) is a crucial tool within the Economic development of the state. Indian retail sector is one amongst the foremost necessary sectors that carry nice potential for attracting FDI. Entry of worldwide retailers is anticipated to own direct impact on consumer similarly as mortal. it's expected to bring down trade goods costs of the mortal. Massive scale and high volume sourcing and technology fringe of international retailers facilitate in realizing bigger operational potency and wide assortment of products at lower costs could also be created obtainable to consumer. Food-safety hygiene and quality area unit price additions. Over 60 percent of the wastage are often prevented if specialized cold storage chains area unit designed according to need. However, aggressive opposition parties from all states of India raised voice and alleged that client shall profit because of selection quality and accessibility of wide merchandise. However, it's feared that within the end of the day consumer might ought to face the chance of high costs, substandard quality and restricted choices once these huge retailers quiet down well in Indian market. however it's additionally true that FDI in retail trade also will facilitate in desegregation the fashionable Indian retail market thereupon of worldwide retail market however at constant time legal and administrative unit and robust mechanism is critical to confirm that huge retailers don't dislocate little retailers by unfair suggests that. However, uniform restrictive structure has to be started with reference to taxes and duties as regards trendy retail sector.

United Nations Guide lines over consumer rights

Formal consumer protection Acts were initial created within the western a part of the globe attributable to the patron movement that flourished within the USA and Europe throughout early twentieth century. Prince Philip Kotler (1972) known 3 phases of the patron movement within the USA.

- The first section was in early 1900's wherever yank government passed bills like
- Pure Food and Drug Act (1906),
- The Meat examination Act (1906) and also
- The Creation of Federal Trade Commission (1914).

The second wave of consumerisation in mid-1930's attributable to improvement in consumer costs in thick of Depression, the sulfa Scandal, and Motor City House wives strike. and also, the third is attributable to factors like structural conduciveness, structural strains, growth of a generalized belief, causative factors, mobilization for action and group action. (Rajanikanth, 2011). Ralph Nader gave consumerism a boom in 1960's. The international consumer movement reached its peak in most countries in late 1960's. In 1962 president John F. Kennedy declared the patron rights that symbolized consumerism. client movement unfold to Japan, UK, Belgium, Denmark, France, European nation, Norway, and Kingdom of Sweden (Rajanikanth, 2011). however, the consumer in developing and



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developed countries were victims of the economic process. In July 1981, the Secretary-General of UN was requested to continue previous consultations on client protection by the Economic and Social Council of UN (ECOSOC) with the aim to following, inter alia, the elaboration of general tips with a special thought of wants of developing nations. In 1982, a group of draft tips was submitted to the Governments of member countries for comment. A report with revised set of tips was submitted to Economic and Social Council by the Secretary-General in might 1983. On ninth April 1985, General Assembly of UN adopted these set of general tips for client protection neminecontradimente and requested the Secretary-General to publicize them to the parties of interest (Harland, 1987). These tips were primarily supposed for member countries, particularly for developing and freshly freelance nations. per “Javier Pérez American state Cuéllar”, The UN Secretary General, these draft tips represent initial arrange to produce associate degree international framework inside that national client protection policies and measures may be found out (Harland, 1987).

The Factors that Contributed and Influenced the Consumer Protection Act

Though there were a series of legislative measures undertaken after Independence in India, the consumers had not been protected to the extent desired. A Private Bill for consumer protection law was introduced but failed in the Parliament house in the year 1977 (CUTS report, 2001). Lokpal and Lokayukta were set up, after the suggestions of Administrative Reforms Commission headed by Morarji Desai Former Prime Minister, to resolve the grievances of Indian citizens .The law Commission of India, in its 105th Report on Quality Control and Inspection of Consumer goods, October 1984 (Law Commission Report 1984), under the Chairmanship of KK Mathew, suggested that we need to establish a much better system to safeguard the patron interests while not the patron being driven to initiate pricey and presumably long drawn out judicial proceeding. During the same period, Madhya Pradesh State Government had introduced “Madhya Pradesh Consumer Protection Bill 1984” which was the outcome of an intensive and analytical study by Consumer Protection Sub-Committee of Madhya Pradesh Law Commission. The Bill had a provision to establish State Institute of Consumer Education Research and Training, State Fair Trade Practices Forum and Consumer Prices Review Commission. It additionally projected a state action beneath Unified Comprehensive shopper Code. The bill proposed legal protection to community activists and award punitive damages to those who were the victims of unfair trade practices.

What Need to be done?

No country will wittingly or inadvertently disregard the interest of the Consumer. The Consumer Protection Act, 2019, is one in every of the examples that's to be treated as a milestone within the history of socio-economic legislation to safeguard the interests of the consumers in India. The world’s most outstanding and simple enactment of our parliament is Consumer Protection Such an easy law isn't precocious to several countries. Before the enactment of this act, there have been sure enactments that protected the consumer rights solely in Associate in nursing for health issues, some of which are Prevention of Food Adulteration act related to food industry, Magic Remedies act, Weights and Measures Act, Essential Commodities Act, etc. But under these laws, the guilty ones are punished and no direct relief is available to the consumers. Then comes the patron Protection Act, 1986 that conjointly provides relief by the means of compensation to the patron of products and services. The Act was brought into force from September 1, 1987, and was amended in 1993, enlarging its scope and effectiveness. The Act meets most of the demands of the consumers but still, there are various shortcomings and limitations in the implementation of the Act.

- The consumer redressal system or forum is becoming difficult, expensive, complicated and time-consuming.
- Evidence and proof of misconduct is not easy to gather as cash memos are not issued for most of the purchases.
- The existing laws are not very clear about the issue of compensation to consumers injured by defective products or services.

Summing Up

Section 2(1)(d) and 2(1)(0) of the Act should be suitably amended to modify the definition of the terms consumer and ‘services’ to make it clear that consideration shall not be a condition precedent in case of availing medical and municipal services provided by the government. A victim of medical negligence or health negligence in a government hospital or by doctor should be entitled to compensation by enlarging the definition of consumer and bringing free services provided to the public by the government. The Consumer redressal Forum should be vested with powers to issue interim injunctions restraining an undertaking or person from carrying on any unfair trade and service practice as defined in act. The Consumer Redressal Forum should be empowered to take up the cases suomoto by authority. In case the unfair trade practices about seller or manufacturer about which a complaint has been made and about which the consumer Redressal Forum has given relief to the complainant, then if Forum is of the opinion that the alleged unfair trade practices is against public interest, it should be empowered to pass an order that the practices shall be discontinued and shall not be repeated. This is commonly called ‘cease and desist’ ordered. It is absolutely essential to ensure the quality of product and services and competence of non-judicial members who are selected to work on the Benches of Consumer redressal agencies.



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