

**The National University of Advanced Legal
Studies Kochi,**



DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENT FOR AWARD OF DEGREE OF MASTER OF
LAWS (2019-20)

ON THE TOPIC

THE CONSUMER PROTECTION ACT 2019 – A CRITICAL ANALYSIS

Under the Guidance and Supervision of

DR. SHEEBA S. DHAR

The National University of Advanced Legal Studies, Kochi

Submitted by: KALYANI ABHYANKAR

Register No: LM10209

LL.M (CONSTITUTIONAL AND ADMINISTRATIVE LAW)

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CERTIFICATE

This is to certify that Ms. **Kalyani Abhyankar** Reg. No. LM10209 has prepared and submitted the dissertation entitled, “**The Consumer Protection Act 2019- A Critical Analysis**” in partial fulfilment of the requirement for the award of Degree of Masters of Laws in Constitutional and Administrative law to the National University of Advanced Legal studies, Kochi under my guidance and supervision. It is also affirmed that, the dissertation submitted by her is original, bona-fide and genuine.

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Place:
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DECLARATION

I, hereby declare that the dissertation entitled, “**The Consumer Protection Act 2019- A Critical Analysis**”, researched and submitted to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirement for the award of Degree of Masters of Law in Constitutional and Administrative Law, under the guidance and supervision of Dr. Sheeba S Dhar, is original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has been submitted by me or anyone else for the award of another degree of either this university or any other university.

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ACKNOWLEDGEMENT

I take this opportunity to express my profound respect and deep sense of gratitude to Dr. SHEEBA S DHAR, Assistant Professor, National University of Advanced Legal Studies, Kochi for her support, guidance and encouragement throughout the course of research work.

I would like to extend my gratitude to the Vice-Chancellor Prof. (Dr.) K. C. SUNNY for his constant encouragement and support. I thank Prof. (Dr.) MINI S for imparting her impeccable wisdom and inspiring throughout the completion of this work. I also express my due respect and gratitude to all the faculty of NUALS for their constant encouragement.

I convey my thanks to Mrs. JEEJA V., Assistant Librarian, Mr. ANILKUMAR C. and Mr. UNNIKRIISHNAN K.K, Library Assistants for their timely assistance to carry out the work.

Words fall short of expressing love, appreciation and gratitude to my loving parents, family members and friends for their constant encouragement.

Kalyani Abhyankar

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LIST OF ABBREVIATIONS

1. AIR	All India Reporter
2. Art.	Article
3. CAD	Constituent Assembly Debates
4. CAG	Comptroller and Auditor General
5. CONST	Constitution
6. CLJ.	Consumer Law Journal
7. CPLJ.	Consumer Protection Law Journal
8. ed.	Edition
9. etc.	Etcetera
10. G.O	Government Order
11. i.e	That is
12. Id.	Idem
13. ILI	Indian Law Institute
14. ILR	Indian Law Report
15. J & K	Jammu and Kashmir
16. Ker.	Kerala
17. Mad	Madras
18. NC	National Commission
19. UP	Uttar Pradesh
20. Ors.	Others
21. para.	Paragraph
22. SC	Supreme Court
23. SC/ST	Scheduled Caste/ Scheduled Tribe
24. SCC	Supreme Court Cases
25. SCR	Supreme Court Report
26. SCW	Supreme Court Weekly Reporter
27. Sec.	Section
28. Suppl.	Supplement
29. TN	Tamil Nadu
30. UOI	Union of India
31. US	United States

CHAPTER I

INTRODUCTION

Human beings are interesting creatures to study. We are all social animals interdependent on nature, animals and each other for our survival. Each social science has studied human beings in their own context and economics is one of the interesting perspective to understand human. It helps us to understand the behaviour of people through their productions and exchanges between them. Production and consumption of goods and services is done through a medium called market place. Market is a mechanism designed by imperfect individuals to facilitate their exchange. In the process of exchange, uncertainty evolves as people are quick to change their decisions due to large choices available. Each individual at one or other time is a consumer in his day to day life. Hence, consumers play an important part in the economic system of the state and their protection is very essential to have healthy commercial transactions. These ethics have been followed in India since time immemorial.

India is a land of moral and ethics which are rooted in its people. The human relations were governed through principles laid down in Vedas. The vedas in Indian history are known as divine law (directly dictated by God) to the sages which were then preached to common man of the state. The oldest authoritative texts of ancient India are known as Manusmriti and Kautilya Arthashastra which contained laws to govern the society. The social, political and economic conditions of ancient society were revealed by the Manu Smriti. He is the ancient law giver, who wrote about ethical trade practices. He prescribed a code of conduct to traders and specified punishments to those who committed certain crimes against buyers. *Kautilya's* Arthashastra is also one of the prominent sources of right and duties of the consumers. It describes the role of the State in regulating trade and its duty to prevent crimes against consumers.

The consumer protection continued to be a matter of concern in the medieval period too. Strict rules were observed for regulation of market during Mughal period also. Modern legal system was established by British regime. Earlier the consumer issues were dealt under different laws like tort law, contract law and criminal jurisprudence. But rapid increase in trade and commerce forced the legislators to draft and bring The Consumer Protection Act 1986 into force in order to provide better protection to

consumers. It is very important to have an effective, efficient and fair implementation of the law to have good governance in the country. This Act initiated a legal revolution by ushering, in the era of consumer protection a new legal culture among the masses to take recourse under the Consumer Protection Act, 1986 regardless of their grievances. This Act has been successfully implemented till large extent since last 25 years and lacs of citizens have been benefited from this legislation but after neo-liberalisation, there were rapid changes in the consumption pattern of the modern consumer which brought challenges in such a way that new approaches were needed to adapt. Technological changes made our lives easier to large extent but also generated imminent threat to consumers to deal in e-commerce like internet banking, plastic money, cyber related crimes. Though consumers have large choices to buy from but do not have appropriate assurance about quality of goods and services, unfair trade practices, non-application of guarantee rules are posing serious concern for the governments all over the world. Large number of consumers are getting deceived. It is important to provide teeth to adjudicatory structure of Consumer Protection Act so that they are able to deal with new age problems faced by the consumers in globalised era. The 21st century is a globalised era where information and technology together have given birth to complexities and information asymmetry. The global issues are calling head for bold policies and planning realms relating to consumer protection.

There were large number of shortcomings and deficiencies under the Act which led to large number of cases pending and delay in their disposal and hence The Consumer Protection (Amendment) Act, 2002 was introduced inducing changes in procedural mechanism and jurisdiction of the consumer forums. This amendment conferred power on District Consumer Forms, the power of First Class Magistrate. In 2008, the second amendment was made to the Act, bringing prepaid purchase cards and property comprised computer software within its purview. But there was no mention about online shopping expressly. This amendment Act does not have any provisions to file online complaints and does not have any specific remedy for the issues faced by consumer in e-commerce industry. In order to fill these gaps, The Consumer Protection Act, 2019 was introduced. The Act has introduced new concepts relating definition of consumer, unfair trade practices, unfair contracts and misleading advertisements. The scholar through this dissertation aims to understand how far the new statute shall be successful in protecting the constitutional consumer rights in this rapidly growing

digital world and offline market structure and analyses the new developments introduced to it.

STATEMENT OF PROBLEM

The Consumer Protection Act 2019 is a positive step towards reformation of consumer laws in the light of changing socio-economic developments. Over the years there have been challenges in the implementation of the 1986 Act due to increase trade in e-commerce industry by way of online shopping, tele shopping, direct selling and multi-level marketing. There have been various cases found where the consumers are often cheated through online market place, for an instance a Member of Parliament ordered mobile through Amazon but he received a stone instead of the same, often quality of products is compromised than the mentioned description. These days many traders are using Instagram for their commercial sales and in one such incident, a complainant received a very low quality of cloth material on purchase and later when she contacted the owner, she could not get through as the phone number had been disabled from service. In such cases, it becomes difficult for the consumer to understand to whom to hold liable and to whom to approach for their grievances. It has also been often observed that major brands like Bata force the customers to buy the polybags and charge excessively for the same leading to deficiency in services and restrictive trade practices. The real estate business has also received many complaints for late delivery of flats by major brands like DLF company in Panchkula, Haryana. They buyer was promised the delivery of flat within 24 months from the date of execution of the agreement, and it was further agreed that failing of delivery of flat, he shall be liable to pay Rs 10 per square feet per month for the period of delay. The DLF Homes were later directed by SCDRC to pay compensation of Rs 1 lac to each buyer in lieu of late delivery and Rs 35000 to be deposited in Consumer Legal Aid Account of the State Commission. In some airline cases, it was observed that boarding passes were forcibly snatched from complainant, and the action was later described as deficiency of service. Most of the consumers are not aware of their rights and redressal system available to them if they are exploited by the traders and sellers in traditional market place, let alone online market place which is much more sophisticated and complicated. A very famous online

market place Flipkart had delivered a bar of soap to the consumer in a SAMSUNG GALAXY phone box and when the frustrated consumer complained about the same to customer executive, they refused to register the complaint stating that it was not a genuine complaint and also denied the refund of money. The Consumer Protection Act 1986 was not sufficient enough to deal with grievances of globalised era like e-commerce grievances and hence the Parliament introduced Consumer Protection Act 2019.

The scholar aims to address the defects of the old statute so as to check if the same defects have been successfully addressed by the new statute. The dissertation deals with the scope and extent of the new Consumer Protection Act 2019 and checks if new Act is satisfactory enough to deal with the online transaction issues faced by the consumers.

SCOPE OF THE STUDY

In India, the consumers are very disorganised and scattered across the country. Therefore, in case of fraud, cheating or any kind of mal practices, consumers are not able to come together as a unit to represent themselves. The ecommerce industry has developed to a large extent, so consumers buy major goods through online platforms and often face irregular supply, inappropriate quality of the product and deficiency in delivery system. The online market forums often have bad return policies or do not have buyer warranties which leaves the consumers helpless further spoiling the relationship between buyer and seller. Since, the consumers are not left with bargaining power, traders often exploit them for their vulnerability. In the offline market structure, hoarding, adulteration, misleading advertisements and dubious hire- purchase are often observed to be used by the sellers to exploit the consumers. In reality, it is a well-known fact that consumer is the harassed and ignored sections of the society irrespective of socio and economic background one belongs to. In order to empower consumers with their rights the Consumer Protection Act 2019 was introduced to provide better protection to the consumers from exploitations and fill the lacunas of the old Act. It has introduced better provisions for establishments of Consumer Councils, redressal systems, new methods of settlements like Alternative Dispute Resolution, etc. The introduction of this new Act was necessary as well established organised online sector of manufacturers, traders, and service providers came into existence, thereby affecting the relationship between the traders and consumers, as consumer sovereignty principle

was largely affected. The Consumer Protection Act 2019 has enlisted objectives which are similar to those of an old Act. But the question arises, as to whether aforesaid objects are achieved or consumer still remains the subject of exploitation in this globalised world. Often tempting advertisements are shown on TV, YouTube channel but the real problem lies in consumer being unprotected from these unscrupulous advertisements as he never gets full information on the subject. For an instance, there was a famous Ad on Complian which claimed that if the child between the age of 8 to 12 consumed it, his height would increase but the same was not true was claimed by many consumers and later the company was directed to pay compensation to the consumers for misleading advertisement. The new Act has attempted to widen the definition of consumer, service, and procedures before the various redressal systems established. The Act has been introduced with the intention of promoting welfare of the society by enabling society to directly participate in the market economy. It has attempted to remove the helplessness of the society, which a consumer feels against powerful businessman. The malady is becoming so rampant and deep part of the society that consumers are not fighting against it but accepting it as a way of life. The enactment in such harsh realities proves to be a silver lining, which may in course of time succeed in checking the rot. The dissertation highlights and interprets the new concepts especially in the light of digital world added in the statute and further highlights the lacunas of new statute. The dissertation critically examines and analyses the new statute and its provisions.

RESEARCH QUESTIONS

1. What is constitutional perspective and human right perspective of consumer rights ?
2. Whether the Consumer Protection Act 1986 was successful to protect the consumer rights?
3. How does Consumer Protection Act, 2019 is attempting to protect the consumer rights in modern world?
4. What are the drawbacks of Consumer Protection Act, 1986 in globalised world?
5. How does the Consumer Protection Act 2019 is addressing the issues faced by the consumers in online transactions?
6. What are the drawbacks of Grievance Redressal Mechanism in practice under The Consumer Protection Act 1986?

7. Whether the redressal mechanism under the Consumer Protection Act, 2019 are effective enough to resolve different kind of consumer disputes in e-commerce world?
8. Whether the Consumer Protection Act 2019 is able to deal with shortcomings of the Consumer Protection Act 1986?
9. What is the scope and extent of The Consumer Protection Act 2019?

OBJECTIVES

- To study constitutional and human right perspective of consumer rights
- To study the defects of Consumer Protection Act, 1986.
- To check if the Consumer Protection Act, 2019 are addressing the defects of the old statute.
- To study the aim and scheme of the Consumer Protection Act 2019.
- To analyse the salient features of new statute.
- To understand the new concepts of product liability, unfair trade practices and unfair contracts introduced in the new statute.
- To check the effectiveness of redressal mechanism institution under new statute in comparison with old statute.

HYPOTHESIS

The Consumer Protection Act 2019 addresses the issues and grievances of consumers in the era of globalisation.

RESEARCH METHODOLOGY

The research methodology adopted in this dissertation is purely doctrinal method. The secondary data like books, newspaper articles, blogs and journals are used to achieve the objectives of this dissertation.

Chapter 1 – INTRODUCTION

This chapter introduces the concept of consumerism and the need to study consumer welfare law by attempting to highlight issues relating to consumers in the globalised

era. The author has listed down certain objectives with respect to which dissertation shall be completed and has further mentioned research questions which shall help the audience to understand the purpose, need and scope of this study. The chapter has stressed out on the importance of the Consumer Protection Act, 2019 and has discussed how the Act help might solve the problems faced by consumers in e-commerce market. A legal system needs to develop from time to time which shall preserve the dignity of the individual, without injuring his self-respect but unfortunately, consumers are largely being cheated through online virtual market either by compromised quality of goods and services or quantity of goods and services and since the whole process is so complex, that consumers do not understand so as to whom to approach for the redressal. The Consumer Protection Act, 2019 is an important statute enacted to protect the interest of the consumer and provide simple, speedy and inexpensive and efficacious way to secure the justice to an aggrieved consumer. Hence, the chapter basically deals with general observations and the importance of Consumer Protection Act, 2019.

Chapter 2- CONSUMER RIGHTS – CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVE

This chapter has studied the evolution of concept of consumer rights from international era to national era. Indian Constitution is grundnorm of Indian jurisprudence and all the rights are emanated from the same. The author attempts to raise the awareness amongst the consumers about their consumer rights so that they can avoid getting exploited by unfair trade practices and take necessary action against the trader or seller at right time. Consumer rights broadly mean that each consumer has the right to have information about the quality, potency, quantity, purity, price and standard of goods or services. The Consumer Protection Act, 1986 and 2019 both enlisted six rights of the consumers which are directly related to constitutional rights of Indian Constitution and author has identified about the same. The chapter further discusses how the consumer rights appear to be human rights and have identified all the characteristics of a right to be recognised as human right and author has stated that the consumer rights should be made part of international covenants so as to give enforceable effect to them across the world.

Chapter 3 – IMPACT OF GLOBALISATION ON CONSUMERISM

This chapter focusses on concept of consumerism, evolution of consumerism, how consumer movement contributed enactment of Consumer Protection Act, 1986, social

significance of consumerism and its impact on society. The chapter further discusses globalisation and its impact on consumer behaviour which has become more complex since 20th century. Consumer is the foundation of an economy. Lot of sociological and technological developments have brought socio-economic changes in the country. India can trace its consumer movement in 20th century and how the era of 21st century eventually changed the consumer behaviour in our country. The positive and negative effects of globalisation has been listed down by the author so as to analyse the need for new consumer law due to consumer behavioural changes.

Chapter 4- JUDICIAL APPROACH ON CONSUMER RIGHTS

This chapter has traced the judicial trend of consumer courts in India on various issues like education, transport, carriers by air, etc. Judicial creativity in the sphere of consumer protection has witnessed steady decline in recent years. Inordinate delays and changing stances by the consumer forums appear to be the single handed cause for it. Consumers have hesitated in some circumstances to approach the consumer courts due to express limitations or self-imposed limitation by the adjudication bodies. The author has mentioned important decisions laid down by the Supreme Court in various aspects of consumer matters and despite the ratio decidendi given by SC, consumer courts have deferred from the same in similar matters.

Chapter 5- COMPARATIVE ANALYSIS OF THE CONSUMER PROTECTION ACT 2019 AND CONSUMER PROTECTION ACT 1986

This chapter has attempted to chalk out the defects of Consumer Protection Act, 1986 and explained further how the Consumer Protection Act, 2019 has resolved to erase those defects. The new Act has included all ecommerce transactions, under this Act and have widened the concept of consumer, service, deficiency etc so as to help the consumers from getting exploited. It has introduced the central regulator known as Central Consumer Protection Authority. The most important and convenient provision for the consumer is that they can file the complaint from anywhere or from where the consumer resides. Consumer Courts are further empowered to suggest mediation as settlement method so as to avoid the litigation. The pecuniary jurisdiction of all the consumer forums have been increased up to or more than Rs 1 crore. And the concept of product liability was introduced and consumer could ask for compensation for any harm caused. Another initiative under the act is that all E-commerce transactions come

under the provisions of direct sales and consumers can also seek hearing through video conferencing. But one needs to assess if these provisions are enough to fill the defects of old Act which the author has analysed.

Chapter 6- CONCLUSION AND SUGGESTIONS

CHAPTER II

Consumer Rights- Constitutional and Human Rights Perspective

We see our customers as invited guests to a party, and we are the hosts, it's our Job every day to make every important aspect of the customer experience a little bit better.¹

The term "consumer" gained widespread recognition in 1962 when John F Kennedy mentioned the importance of consumer for an economy in his speech to United State Congress in 1962. The term 'consumer' has not been defined universally as the concept of consumer changes according to varying circumstances. The Black's Law dictionary defines "consumer" as a person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.² The consumer himself has gone through transformation to a large extent in a short period of time and therefore the meaning of consumer has been subject to change from time to time and place to place. Consumers have continued to develop and evolve and therefore the market system has also changed in response to consumer behaviour.

The principle of "caveat emptor" was introduced in the olden days where seller and buyer entered into transactions in the open market system. Here, the seller would exhibit his goods, and consumer shall buy them only after proper examination. Consumers were expected to purchase the products using their reasonable skill and observation. The rule implied that no seller shall be liable for any defect in the product. Eventually, there was an increase in trade and commerce, which led to the introduction of a variety of goods and services in the market, and rule lost its importance gradually. In the modern age, economies developed, which led to the establishment of new dealings between sellers and

¹ Jeff Bezos, CEO of Amazon.com

² See B.A Garner; Black's Law Dictionary 8th Edition (St Paul Minnessota: West Publishing Co. Ltd.), p, 316

consumers through e-commerce industry, and it became more important to maintain the sanctity of the relationship between them.

Consumerism is the protection of interest of the consumers. Mahatma Gandhi had said “A Consumer is the most important visitor on our premises. He is not dependent on us we are on him. He is not an interruption to our work; he is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving an opportunity to serve him.” Despite such views, consumer awareness is still in its infancy stage and consumerism as a social movement has not been able to make its mark as it could have in the society. Consumerism is a very recent phenomenon which aims to protect the consumers by government through its rules and regulations and by NGO’s that aim to make consumers aware about their rights and duties.

Right is a correlative to duty according to Hohfeld Analysis and it has been defined by many jurists since time immemorial. The definition which is widely accepted of right is “something that is due to a person by a just claim, legal guarantee, or moral principle”.³

The concept of right cannot be explained in particular but it may be understood as something which a man has entitlement to naturally for virtue of being a human or has been guaranteed by the state through its constitution or statute. Consumers are accorded various rights across the countries. John F Kennedy in his famous speech in 1962 suggested four rights on which consumer protection law should be formulated. The Consumer International drafted consumer rights which have been accepted by most economies in their statutes.

2.1 Consumer Right- Constitutional Perspective

In India, constitution is the grundnorm and all the other laws are deduced from it. The document is very vibrant in nature and it is so comprehensive that judiciary has used the perfect opportunity to interpret its words in the most creative manner. The constitution of India is not a bare text, but a living document which has evolving character.⁴

³ B.A Garner; Black's Law Dictionary 8th edition, 2004, St Paul Minnesota: West Publishing Co. Ltd, p7347

⁴ State of West Bengal v. Kesoram Indu. Ltd., AIR 2005 SC 1646, 1678-79. To

Indian Constitution in Article 21 states that “no person shall be deprived of his life or personal liberty according to procedure established by law.” This article has been widely interpreted by Indian judiciary in various cases with respect to different jurisprudential issues. A consumer cannot be denied any essential service with choices as it is a guarantee by Article 21 of the Constitution.⁵ It is the responsibility of the state to ensure safe and healthy life to the citizens, therefore any product which endangers consumer’s life and property shall disregard safety provisions of the Act and directly conflict with Article 21 of the Constitution.

The state has to further protect the consumers through its regulations against consumer frauds like malpractices, adulteration and production of sub-standard goods by punishing the violators for their wrongful acts. Hence, Article 21 of the Constitution has given birth to various rights of the consumers like right to safety, right to education and many more.

Right to equality is a fundamental right guaranteed to each and every individual residing in India irrespective of caste, class, sex, place of birth or language. Article 14 of the Constitution guarantees citizens an environment free from arbitrariness and biases. A state is not supposed to do monopoly in its dealings with the customer. Each and every consumer is supposed to be treated equally irrespective of different purchasing power. India’s consumer protection law protects both, have and have nots in the country and hence the basic necessities of life are available to all at the prices they can afford to.

The constitution makers while drafting the constitution always had in mind about the well-being of people of the country. Article 38 of the Constitution deals with the responsibility of the state to promote the welfare of the people by securing and protecting a social order. It basically aims to reduce the disparity and inequalities amongst people with respect to opportunities, status and facilities. The state

use the words of Granville Austin, it "was perhaps the greatest political venture since that originated in Philadelphia in 1787." GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 308 (1966).

⁵ See, Parmanand Singh “Thinking about the limits of Judicial Vindication of Public Interest”, (1985) 3 SCC (Jour) 1

provides the basic amenities of life with varieties to all the consumers so that no one is denied anything in the market due to their quo status.

Article 39 of the Constitution suggests state some policies which are to be followed for welfare of the citizens. India has a free as well as regulated market policy where the prices of the products are not fixed by any monopoly but merely on demand and supply principle. The state through the law regulates the minimum and maximum prices of the food items and other products so that sellers do not exploit consumers by charging exorbitantly.

Article 46 of the Constitution deals with promotion of educational and economic interest of the SC, ST and other weaker sections. It basically aims to avoid and prevent social injustice for the above section by the sellers and other consumers and further aims to protect them from harassments in the market place. Therefore, consumers should be protected from adulterated items which may be injurious to health.

The principle of consumerism can be observed in Article 47 of the Indian Constitution. It aims to improve the standard of living and raise level of nutrition by providing products like fruits, vegetables, milk and other essential food items at reasonable prices so that citizens of the country can buy them. The Indian Consumer law has been successfully achieving that.

These are the following consumer rights prescribed in the Consumer Protection Act, 1986.

2.1.1 Right to Safety

The Consumer Protection Act 1986 prescribes first consumer right as right to be protected against the marketing of goods which are hazardous to life and property. This consumer right itself flows from Article 21 of the Constitution which enshrines right to healthy and safe life for its citizens. The Government and its authorities have to prevent dangerous goods from entering into markets. The Government has several laws for this purpose such as laws against movement of

narcotic drugs⁶. Certain goods like adulterated goods are dangerous to life as well as property.

The subject matter of dangerous goods is generally taken care under tort law. In *Donoghue v Stevenson*⁷ A dead snail was found in the opaque bottle at a restaurant and the manufacturer was held liable for the same. This case established the principle that a manufacturer shall be liable to the end user if his good injures the consumer in normal course. The decision has broadened the category of persons responsible because the whole chain from the level of the producer up to the local retailer is liable to the ultimate consumer. In recent years, it has been observed that this principle has been extended to various categories of products like adulterated food, hair dye, tombstones, industrial chemicals, lifts etc.

It is a very common practice for Indians to consumer adulterated foods unknowingly due to its availability in the market at large. In Northern parts of India, mustard oil is largely used to cook vegetable which is obtained from mustard seeds. The usage is mainly found in J&K, Himachal Pradesh, Uttar Pradesh, Bihar, Punjab, Haryana and some parts of Maharashtra. For centuries, mustard oil has been used as an edible oil but are these safe for consumption now, considering the adulteration aspects in India. We are all aware that there are certain brand oils in India which are not good for consumption but they still persist in the market.⁸

The Kochoris or Samosas that are sold in confectioneries shops are very harmful for the customers because they are either fried in Vanaspati oil or reused oils which are high in transfat and they are extremely prone to cardiovascular diseases. Despite us knowing about these facts, such goods are sold in every corner of the city in India.

Article 21 of the Constitution lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law. The

⁶ DR. AVTAR SINGH, INTRODUCTION TO THE LAW OF TORTS (CONSUMER PROTECTION, 90(2nd edition, Eastern Book Company 2005)

⁷ 1932 AC 562

⁸ Priya Nagesh, Fast Food and Health, MAGAZINE CONSUMER VOICE, 1, 22 (December edn,2019)

term 'life' has been very given wide interpretation in Indian Jurisprudence extending to include right to healthy life and environment. Hence even if food items or any other products are sold in the market which may have bad impact on them, consumers should be informed about the same by the sellers. The protection and empowerment of consumers would depend upon the measures taken by the Government like to ensure safety and quality of services, providing facilities for testing and certification of goods and services and formulation of policies to compensate for hazardous products.

To ensure availability of safe products for consumer consumption and use, the Government has enacted pro-consumer Acts. Food items and medicines are not only essential for survival, but dangerous if these are adulterated or not of specific standards. To protect the consumers and to ensure safe food and safe drugs, various laws have been enacted by the government like Prevention of Food Adulteration Act 1954, The Drugs and Cosmetics Act 1940 etc. There is not a comprehensive act for product safety but there are different legislations for different categories. In 2006, the Food safety and Standards Act was introduced with the aim to ensure safety of the consumers. The consumer can seek redressal against any unfair trade practices, or any defective good or goods which will be hazardous to life and safety when used. With globalization of the economy and e-commerce, net shopping and rapid expansion of markets and goods, the consumers need greater protection with respect to the safety of products.

2.1.2 Right to Consumer Information

The consumer has right to be informed by the producer about the quality, quantity, potency, purity, standard and prices of goods one buy⁹s. The right to know is basically an essential right to life and social justice. The Indian Constitution enables freedom of speech and expression. And right to know is one facet of the same. If the consumers are denied access to the information about goods and services, it will lead to severe dent in relationship between consumers

⁹ Section 6, Consumer Protection Act, 1986.

and sellers. Right to information ensure public participation in the decision making process of the country which is an essential element in a democracy.

According to this right, consumer must be provided with accurate facts so as to make an informed choice regarding his consumption. He has right to know about following¹⁰ :-

- to get a detailed information regarding the products they are going to purchase
- to get information regarding the quality, quantity, potency, purity, composition and prices of goods or services offered for sale
- not to be misled by inaccurate publicity
- to know the ill effects of consumer products if any
- to get all sorts of information to make a wise choice regarding products and services
- to get access to issues which directly affect citizen's life
- To get access to welfare schemes of the Government.

These are intended to save the consumers from misleading descriptions about the nature and quality of the goods.

Example - The fairness cream Fair and Lovely had endorsed that consumer shall become fair within 3 weeks of its usage but he never became and fair and that led him to mental injury. There is no such cream which can change a person's complexion drastically and hence the consumer was awarded Rs 15 lakh as compensation by the consumer court. The Court had further directed the company to not provide such misleading advertisements.

Consumers can obtain information through various sources like labels, advertisements, print media and official records of public and private undertakings.

In Consumer Prtotection Council v National Dairy Devpt Board¹¹ the complainant wanted to know in what way the dairy board was using the imported balmoein oil and the Board had refused to furnish the information on the ground

¹⁰ LAL, B SURESH, INTRODUCTION TO CONSUMER RIGHTS AND RESPONSIBILITIES, 2016

¹¹ (1991) 2 CPJ 617 (Guj)

that figures were not meant to be disclosed to public. The court held that consumer was entitled to requisite information.

The provision relating right to information to consumers has the potential power to empower citizen. It is a fundamental and constitutional right which cannot paralyse the consumer from making informed choices. The more information that is provided to consumers about legal rights, the more informed and rational their decision is to enter into a contract for goods and services. Such decisions are less likely to lead to confusing and costly disputes than those which are ill informed. Consumers who are well informed invest less money and time in finding out about possible remedies¹².

2.1.3 Right to be Assured

In India, The Central Council constituted under the Act checks if the organisation of markets and market practices are carried in fair and just manner. It also supervises if the consumers are given choices w.r.t goods and the same goods are given at variety at competitive prices. The sellers cannot keep the customers helpless by not giving them varieties and choices to buy goods at competitive prices. If such mala-fide practices are found to be practiced, they are seriously notified Central Consumer Council¹³ where they investigate for the reason behind the seller's behaviour. If it is found that he is bound by the producer himself, it is the responsibility of the Council to untie him from all such burdens. It is believed that the best way to improve quality and good for money is to give citizen the wider choice.

2.1.4 Right to due attention at Appropriate Forums

This right has been derived from the Article 21 and Article 19 of the Constitution. It basically assures the consumers that they shall be heard for their grievances by the consumer forums and due attention shall be given to them from appropriate authorities. The Central Consumer Protection Council has the duty to enforce the above rights of the consumers. This Act aims to provide speedy redressal to the

¹² 1992 Journal of Business Law 191-192

¹³ Section 6c, Consumer Protection Act, 1986

consumers and hence for the same purpose they have established a quasi-judicial authority at District, State and National Level. These authorities observing the principle of natural justice, provide relief of specific nature to consumers if their rights prescribed under the Act are infringed.

In *J.J Merchant v Srinath*¹⁴

In this case, there was inordinate delay of nine years in disposal of the complaint so the appellant contended that the case should be dismissed merely for the time taken in the disposal. The court held that if this contention is accepted to dismiss the case, the whole purpose of the Act shall be frustrated and hence directed the complainant to approach civil court.

Hence the consumer derives this right from the Constitution itself through Article 21 of the constitution which ensures its citizen right to speedy trial and right to be heard. \

2.1.5 Unfair Trade Practice or Restrictive Trade Practices or Unscrupulous Exploitation of Consumers

Article 14 of the constitution protects the consumers by taking into consideration their welfare. The rights of the consumers enshrined under the Act flow from Article 14 to 19 of the constitution. The preamble of the constitution aims to secure economic and social justice but unfair trade practice or exploitation of the consumers leads to infringement of social and economic justice of the consumers. The Act is socio economic benevolent legislation. Hence there shall be clarity and fairness in all the transactions between the consumers and sellers.

The consumer has a right to seek redressal when they have problem with goods or services bought or hired for which they have paid. In all the cases of unfair trade practices or restrictive trade practice, the consumer has option of approaching the forums under the Consumer Protection Act 1986¹⁵.

¹⁴ AIR 2002 SC 2931

¹⁵ National Consumer Protection Samiti v Chief Electrical Supervisor, 1991 (1) CPR 191 (Guj)

In *M.O. Hasan Kuthoos v Joseph K Thomas*¹⁶,

The appellant had given his car for service to the respondent and the advance was deposited for the same on the condition that it shall be returned after 2 months. But it was actually returned back only after the beyond mentioned period. The court observed that it was unfair trade practice and the respondent was directed to compensate with 14% of the deposit.

The above clause can be observed in Benjamin: “The buyer may by virtue of haste, ignorance, gullibility, inferior bargaining position or simple imprudence into a transaction in which the goods supplied or the terms of the contract or both are unsatisfactory and in many circumstances it may be felt that he is deserving of protection. It may be desirable to control undesirable practices¹⁷...”

The restrictive trade practice has been defined in the Monopolies and Restrictive Trade Practices Act 1969.

The consumers can report grievances of various kinds like: -

- a trader adopting unfair trade practice
- defective goods
- deficiency in service
- goods hazardous in nature
- excess price charged

This right can be exercised effectively through, various laws and redressal mechanisms which are provided. Consumer must make complaints for genuine grievances. The responsibility lies with the consumer to seek redressal. Consumers alone, or the organizations working for the welfare of consumers should come forward to register complaints against greedy traders who exploit consumers.

2.1.6 Right to Consumer Education

¹⁶ (1991) 2 CPJ 30 (TN)

¹⁷ Benjamin's Sale of Goods Act, 627 (4th Edn, 1992)

Article 21 of the Constitution states about right to life which includes basic essential of life i.e. right to education. Similarly, it is an essential right of the consumer for information to act as an informed consumer. Consumers require necessary knowledge and skills for taking action to influence factors which affect consumer decisions. Consumer education provides the knowledge necessary to develop citizens into intelligent buyers. In broader sense this right means, right to know and be aware of all the developments which might affect his choices.

In India, many consumers are ignorant and ill -informed about the things they buy. They often believe the manufacturers and sellers who wish to make quick money and easy money by exploiting these consumers. Consumer education shall help them what to buy, why to buy, how to buy, how much to buy and how to use it.

Example: We often observe that the soft drinks which are sold at shops at MRP are charged at such higher rate for the same when one visits the Mall or Dhabhas. In such situations, is the consumer supposed to pay whatever demanded? The judiciary has mentioned about the same in many cases that consumer is supposed to pay only MRP and not more than that. But as most of us are ignorant about the same rules and regulations we end up losing money by paying more amount than required.

Aim of Consumer Education

The aim of consumer education is to increase the consumer awareness and develop confidence among them so as to help them make sound choices to buy goods and services.

2.2 Consumer Rights and Consumer Protection Act, 2019

The scholar has successfully explained that the consumer rights prescribed in Consumer Protection Act, 1986 have derived their soul from the Constitution of India. But the 1986 Act, suffered some lacunas like absence of recognition of digital consumers, unfair trade practices of the seller on online platforms like Amazon, Ebay etc. due to which consumer interests were harmed very frequently. The adjudicatory bodies could not provide justice to the consumers as there was no scope of enlarging the legislation even through additional amendments as the

1986 Act needed some fundamental changes. Hence, the Consumer Protection Act, 2019 was introduced by the Parliament in August 2019 which has brought some fundamental changes in definition of consumer like recognising consumers who buy goods online or endorsement of goods or services done by the celebrities as we know that large masses of people follow the goods advertised by the celebrities. Further, the 2019 Act has prescribed the consumer rights exclusively under Section 2(9) of the Act whereas in 1986 Act the consumer rights were described as objective of the council. Therefore, the importance of consumer rights in the modern world should be given utmost importance not only at national level but also at international level because each and every person is a consumer at some point of time in his life.

2.3 Consumer Right - Human Rights Perspective

Consumer right has always been defined as constitutional right or tort based law or contract based law but it is now time to give a thought if the same can be considered as a human right. Let us see if human right concepts can be used to define consumer relations. The consumer relations have never been given very strong attention. The human rights will give a different angle to understand the consumer relation as both seller and consumer have different powers and liabilities towards each other.

The concept of right with respect to human right is difficult in application for consumer relations because the consumer claim shall be directed against private party and not against the state and states are not under any obligation to grant specific rights to consumers as it has not been mentioned in any human rights convention. The human right principle in its traditional approach cannot be applied to consumer as human rights obligation are assumed by states and owed to their people. In consumer contract the violator is the seller, producer or manufacturer but state nowhere is responsible for the same violation. In consumer law, state can only be violator of the consumer right if it acts as supplier. So one may wonder if the human rights are applicable when the entities are private parties or non –state parties.

In India, the consumer rights are guaranteed by The Consumer Protection Act 1986, which is a positive law where seller is not liable with human rights obligation; not in the way like State has to respect, provide and fulfil consumer rights¹⁸. However, there are situations where state may have the responsibility to deal with “liability”. Following are the situations: -

1. State may intervene to avoid violation of consumer’s property¹⁹. In India, it is done through enforcement of statutory consumer law in favour of consumers.
2. To secure consumer of his entitlement to an existing right. Example right to a healthy environment is found inextricably linked to right to life.²⁰
3. A regional consumer right {EU} should be constructed akin to human right which shall have same effect as any other human right. These can be then imbibed in domestic laws at practical level according to respective economies. But as of now, no such right exist in human rights jurisprudence.
4. To establish the relation where both consumer and seller are obligated towards each other unlike classic human rights. Indian Consumer law has established such relationship between consumer

The European Union, under the terms of the Unfair Terms in Consumer Contracts Directive²¹ pre-dispute arbitration clauses inserted in consumer contracts will be deemed contrary to good faith where they have not been individually negotiated and subsequently any disputes arising there from cannot be arbitrated. One can assess from this clause that there is an assumption in majority of arbitration cases, consumer class is at disadvantage.

But it should be noted that EU has not dealt with these directives seriously in terms of its enforcements across the jurisdiction which shows that they do not consider it an urgent matter to be dealt with.

¹⁸ Report of the Special Representative, Protect, Respect and Remedy: A Framework for Business and Human Rights, UNDoc A/HRC/8/5 (7 April 2008).

¹⁹ EC Directive 93/13 on Unfair Terms in Consumer Contracts introduced the concept of good faith, according to which all the terms in consumer contracts which were not individually negotiated must be fair and comply with the requirements of good faith.

²⁰ Subhash Kumar v State of Bihar, AIR 1991 SC 420.

²¹ Council Directive 93/13/EEC (5 April 1993), OJ L 95 (1993).

Example The 2007 Charter of Fundamental Rights of European Union²² constitutes mostly all human rights but the provision dealing with consumer protection does not give due importance and merely recommends EU member states to adopt consumer friendly policies. Despite this provision, no EU organisation has ever taken any initiative to implement such policy collectively or individually. Therefore, Article 38 should be read as having only institutional effect without available individual or collective remedies.

2.3.1 Consumer Rights in Absence of Private Transaction

There are situations where consumer rights have been infringed or affected in the absence of private transactions. A decade ago, most economies of the world faced financial crisis and the victims of the same were the most ordinary people. The governments had huge debts at high interest rates and in order to meet those expenditures, governments changed their social and fiscal policies which trickled down masses. The Greek government removed all the social welfare schemes like, free healthcare, pension and schoolings which violated their rights like civil and political rights and it was not justified due to mere fiscal claims. The Greek economy had raised government taxes on all conveyance transactions and increased VAT on all consumer goods and slashed civil servants salaries and pensions²³. Due to financial constrains consumers could not freely buy goods in the open market and they were uncertain about their finance in the future. The effect of VAT had further increased the price of staple food twice fold and hence it became difficult for an average consumer to consume them. The spending power of the people in the economy decreased and the property rates decreased not by the private transactions but due to government policies and measures.

As a consequence of above government actions, the consumer's right to property were affected to a large extent. People could not afford decent health care in private hospitals or public healthcare and parents could not send their children to school²⁴. It is necessary to assess if people of the country have claims against

²² OJ C 364/1 (2000).

²³ See Bantekas, *supra* note 3, pp. 44-46.

²⁴ The German Federal Constitutional Court has held that the State's power of taxation cannot be used to deprive people of the means for their 'existential minimum'. BVerfGE 82, 60(85), BVerfGE

government for violation of their property rights. The fair argument shall be that it is responsibility of the nation to protect the property rights of its people through fiscal policy measures and avoid situations of bankruptcy and debts. But if state only intends to pay creditors and neglect the vulnerable of the society, then it shall lead to blatant violation of human rights and consumer rights indirectly.

2.3.2 Characteristics of Human Rights

Rights have been enumerated in various international covenants²⁵ and one needs to examine if the definitions are exhaustive in nature. If one only considers those rights which are mentioned in the international conventions shall be a very narrow approach towards the concept of human right because the social needs keep changing and accordingly the concept of human rights also keep evolving. Eventually, new legislations are introduced to satisfy those needs²⁶.

Cranston states that a "human right is something that pertains to all men at all times,"²⁷ ... "economic and social rights' cannot logically be considered universal human rights,"²⁸ He further states that human right is something which is *of paramount importance*²⁹ and "no human can be denied without a grave affront to justice."³⁰ But there is a serious drawback with the idea of paramount importance given to human right as it shall lead to great difficulty in deciding what criteria should be used to define right as most important. The Cranston quotation also suggests that all human rights are general and, as such, relevant to the entire world community.³¹ His views can be used to understand the descriptive nature of human rights but cannot be used to define human rights. Though human rights are for whole general public but they are also intended to protect minorities, disabled segment of the society, women and children. So, it can be concluded that human rights are not only confined to "liberties of thoughts and actions" but much more than that. One of the example is right to education is recognised as

87, 153(69).

²⁵ UDHR, ICCPR, ICESCR

²⁶ B. Sohn, "Protection of Human Rights Through International Legislation" Institut International des Droits de l'Homme, ed., Rend Cassin Amiconom Discipulonunque Liber, vol L 1 (Paris: P&lone, 1969) 324 at 331.

²⁷ M. Cranston, what are Human Right? (London: Bodley Head, 1973) at 23.

²⁸ Ibid. at 54.

²⁹ Ibid at 67.

³⁰ Ibid at 68.

³¹ M. Cranston, what are Human Right? (London: Bodley Head, 1973) at 23.

Fundamental right in India and has been inserted in their Constitution through 86th Amendment. To assess if a particular right falls within the concept of human right, we should refer to some established some guidelines as follows: -³²

1. Human rights are applicable to whole world and do not belong to particular group of people
2. The primary concern of human rights is individual's dignity, development and honour.
3. Human rights can only be enforced against the state.

The nature of consumer right is very individualistic in nature. It does not belong to any particular segment because each and every one is a consumer from time to time. Even vendors are considered to be consumers in certain jurisdictions depending upon the various circumstances. The main idea behind introduction of consumer rights is entitled to protection to consumers irrespective of cost benefit analysis. And consumer rights protect individual's honour, dignity and development which is one of the facet of human rights. Therefore, consumer rights can be declared as human rights.

Another aspect of human right is human dignity which has been given wide recognition in various international conventions.³³ Human dignity is related to economic and social character of human right. The intrinsic worth of each person is drawn through the same. The human rights can be strengthened by incorporating new rights and applying to them in new circumstances. In a free market economy, protecting consumer from unfair trade and unfair contract is to maintain their dignity.

Consumer rights are equally important as human rights. The human rights are protected by government against arbitrary agreements. In the similar manner, consumers are intended to be protected from big organisations, monopolies and cartels. The standard form of contracts used by big e-commerce companies like Amazon, Flipkart and Myntra violate the consumer's dignity as they impose

³² L Henkin, "Introduction" in L Henkin, ed., *The International Bill of Pights: The Covenant on Civil and Political Rights* (New York. Columbia University Press, 1981) 1 at 2, where he states that the "idea of limitations on government ... in favour of individual autonomy, dignity, and need, has taken root."

³³ O. Schachter, "Human Dignity as a Normative Concept: Editorial Comment" (1983) 77 Am. J. Int'l L 848 at 848.

their will “take it or leave it” on them.³⁴ These problems are very common as each and every person is a consumer from time and time and thereby it becomes more important to give due to attention to consumer rights which aim to protect us from abuse of power by these private organisations. To maintain equality and justice in the market, economic human rights should be well protected which overlap with consumer rights and therefore consumer rights are also human rights.

2.3.3 Consumer Protection and Universal Declaration of Human Rights 1948

One of the ways to acknowledge right as human right is to incorporate those rights in international documents like UDHR and ICCPR. It cannot be a sole test to determine any right as human right but it is definitely a strong indication. Consumer rights are basic economic rights of a human and hence can be imbibed in respective part of UDHR.

Universal Declaration of Human Right was the first human right which dealt with economic rights. It was the first declaration that was adopted and introduced by international organisations. It deals with social and economic rights in a very detailed manner which are of special significance to consumer protection. Article 23 of the Declaration states “to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity” and Article 25 states “right to a standard of living adequate for the health and well-being of himself and of his family.” Though these provisions are very general in nature and have not been drafted in relation to consumer rights but one of the goals of consumer protection is to help people in reaching an adequate standard of living in a broad sense. Although, the declaration does not directly deal with consumer protection, its goals overlap with each other to large extent and thereby, consumer right can also be imbibed in the same declaration.

2.3.4 United Nations Guidelines for Consumer Protection 1985

³⁴ F. Kessler, "Contracts of Adhesion-Some Thoughts About Freedom of Contract" (1943) 43 Colum. L Rev. 629 at 632.

The UNGCP was the first international document which got formal recognition worldwide and was adopted by UN General Assembly on 9th April 1985. It acknowledged consumer rights as human rights. But guidelines are not given equal importance of treaty as they do not have binding nature on the parties who have consented to them. These guidelines only impose moral obligations.

To adopt these guidelines at an international level, there was struggle behind the same for continuous 10 years by the International Organisation of Consumer Unions. It comprises of 170 consumer organisations from 60 countries.³⁵

Section 1 of the UNGCP enumerates objectives of the guidelines.³⁶ The preamble of the UNGCP states "consumers should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development." The UNGCP contains guidelines and countries develop their consumer protection laws based upon these guidelines. Consumer protection laws vary from state to state depending upon the capacity and needs of the people there. One needs to understand consumer protection is not a luxury for developing countries but a matter of essential need of the society. The UNGCP states six needs in its section 3, which have been given the status of consumer rights in Indian jurisprudence.

If one analyses UNGCP closely and intrinsically, it has been implemented in similar manner as UDHR and ICESCR. Article 24 of UDHR and Article 11 of ICESCR emphasise about adequate standard of living and this can be achieved only through proper consumer protection law in the country.³⁷ UNGCP states

³⁵ For a description of the iocu and its activities towards the adoption and implementation of *the UNGCP*, see *Development and International Economic Cooperation. Consumer Protection. Report of the Secretary-General*, 29 May 1992, UN Doc. E/1992/48. The text is published in "Consumer Protection. Report of the Secretary-General of the United Nations" (1993) 16 . Consumer Policy 97 [hereinafter 1992 United Nations Report] with N. Reich & G. Woodroffe, eds., "Editor's Note" (1993) 16 J. Consumer Policy .

³⁶ The seven objectives are:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices ...;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international co-operation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with great choice at lower prices.

³⁷ Sections 13-27 and 39-42 of the *UNGCP* are an implementation or concretization of these

about physical safety in its guidelines which is an extension of right to health under Article 12 of the ICESCR³⁸. The economic rights of consumers are a basic rights led in ICESCR. Section 13 of the UNGCP requires government to promote “just, equitable, social and economic development” in the society which is in direct relation to adequate standard of living mentioned in ICESCR. The UNGCP deals with basic foundations of human rights and should be now recognised at equal level as UDHR or other international covenants. We have various international documents which deal with consumer protection in parts indirectly but they do not constitute binding international law. The consumer protection is an international soft law³⁹ but it does not mean that value has lessened. There is lack of enforcement, due to which consumer guidelines do not get formal recognition.

Since past decade, major steps have been taken in direction of granting international status to consumer protection. UNGCP has led a benchmark for the economies to formulate their consumer policies.

2.4 Conclusion

In India, the Consumer Protection Act, 1986 prescribe the consumer rights but the grundnorm in India is constitutional law and hence it can be concluded that all consumer rights are also derived from the Constitution of India. Unfortunately, the 1986 Act was not able to protect the interests of the consumers in digital world and even if the amendments had been made, the Act needed some fundamental changes and therefore, the 2019 Act was introduced in August 2019 which aims to protect the rights of the consumers in the globalised world due to their changed consumer behaviour.

It can now be agreed that initially consumer rights were recognised as soft rights but now they can be given the status of human rights due to growing e-commerce business and globalisation in the economy. We examined above that on what basis rights should be called as human rights and consumer rights do

rights.

³⁸ ICESCR, art. 12, recognizes the right of physical health. UNGCP, ss. 9-12, protects physical safety.

³⁹ Harland, D. J. “SOME INTERNATIONAL DIMENSIONS OF CONSUMER LAW AND POLICY.” *Journal of the Indian Law Institute*, vol. 29, no. 4, 1987, pp. 451–467.

fall in the category of all the assessments on which a right is recognised as human right. Substantial and procedural tests are also laid down on the basis of which we can recognise a right as human right and consumer rights successfully pas those tests so as to get the claim of human rights exclusively. The international documents have time again and again showed an inclination to recognise consumer rights as human rights. Hence, it is the hour of the need to recognise consumer right as human right and constitutional right internationally and nationally.

CHAPTER III

Consumerism and Globalisation

India had a rich social and cultural tradition since pre-historic times of Harappa and Mohenjo-Daro civilisation. The nomadic life came to an end after Aryans settled in northern parts of India. Our country was always known as agricultural economy, which largely is a predominant factor to shape the cultural values of the people. In India, the moral values and constructive activities were emphasised upon but in western countries colder and harsher climatic conditions forced their economies to focus on development of material possessions and accumulation of same. India has been invaded by various cultural sects like Aryans, Islamic groups, British, Portuguese and French which largely influenced existing culture and hence, it no more focussed only on spiritual values but gave large importance to occupying material resources to sustain also.

3.1 Consumerism

Developing economies generally face an issue in developing products and marketing practices which is nothing but advocating consumerism. Consumerism means protecting the interests of the consumers at large. Ralph Nadar had explained consumerism as “the quality of life”. He considered and wrote everything from the point of protecting, preserving and enhancing a human life.⁴⁰ In a transatlantic world, consumerism is a social movement to safeguard the rights and powers of the consumers at large in relation to sellers. According to this concept, the sellers are at liberty to produce any commodity in any manner and style to push them into market place, if they are not injurious to public health and safety. A necessary concept is that there should not be any discrimination with regard to prices amongst similar sections of buyers. A seller has right to promote his product, only the condition is that it should not fall in the category of unfair practices and competition. Sellers can use any scheme to sell their products in the marketplace provided they do not fall under misleading and unfair contents and in execution. In the similar way, a consumer has right to not purchase anything that is placed before him. But buyers always have a concern that product should not be injurious to their health at any cost. A product which is shown to the buyer should be exactly same as it is shown to them while selling. However, “the

⁴⁰ Action and Le Mond, Ralph Nadar: A Man and Movement 169(1972)

consumers are at the mercy of business in the marketplace. The only option they are left with is to buy or not buy a particular product. At times they are forced to buy products that are adulterated or inferior out of necessity.”⁴¹ If one looks carefully at the traditional rights of sellers and buyers, we can say that sellers are in much more advantageous position than buyers in the market place. The only tool which a buyers have is that they can avoid to have the product or not to fall into the trap of incentives used by sellers if the commodities are of not adequate quality. Traditionally, it is believed that consumer has a sovereignty to accept or to reject any commodity which is offered to him but in a world of scarcity, practically a consumer is often forced to buy whatever is available in marketplace, irrespective of the quality of the commodities.

The consumerism movement took a start in U.S.A when John F Kennedy in a special message to the Congress on protection of consumers said that they could have certain definite and basic rights.⁴² He discussed four basic rights i.e. Right to safety which means to be protected against marketing of goods which are hazardous to life, Right to be informed i.e. to be protected against fraudulent practices used against consumers by sellers, Right to Choose i.e. to be assured of variety and good quality of products and Right to be heard i.e. consumer interests will be protected by administrative tribunals.

Under consumerism, buyer needs improvement in the quality of products and introduction in the fair marketing practices in order to increase span of life. The consumerists in order to increase life span, believe in the imposition of control in ingredients that are essential in the manufacture of commodities and also consumer representation in business organisations to look after consumer welfare. The consumer welfare implies representation of consumers in business decision making process. The consumerists believe that world resources are limited in nature, therefore social values must be respected to promote peace and harmony between the sellers on one hand and buyers on the other.

Consumerism has been under discussion since decades where many researchers attempted to explain the term, social activists and lawyers tried to interpret the term using different research methodologies. Gabriel and Lang⁴³(1955) explained the

⁴¹ McGuire, E. P. (1980). The spread of protectionism. In: E.P. McGuire (Ed.), *Consumer protection: Implications for international trade*, pp. 1–6. New York: The Conference Board.

⁴² John A, Occhiogrosso “Consumer Protection, Information and Education: A country’s view”, 8, San Diego L. Rev. 38 (1970)

⁴³ Gabriel, Y & Lang, T 2006, *The unmanageable consumer*, 2nd ed. SAGE Publications Ltd, London,

meaning of consumerism as a social movement to protect consumers against exploitation by businessmen and promotion of rights of consumers. But Mc Gregor⁴⁴(2001) explained the meaning of consumerism in a much different way where people's happiness is directly proportional to their consumption ability of material goods. Consequently, the meaning of life is decided on the basis of acquisition, ownership and consumption. This concept of consumerism has been imbibed from western countries where they evaluate person's standard of living by his capacity to possess material possessions.

The "consumer is a king" is a philosophy on which growth and expansion of market structure was observed. But India has observed this philosophy since the time of Manusmriti who had laid regulations regarding ethics for sellers to sell the goods to consumer and never leave any of them unsatisfied. He had also laid down punishments if any seller was found following unethical practices like consumer exploitation or thug. Later the same philosophy was introduced by Gandhi in Indian economy where he claimed that customer is the most important visitor in the premises where seller gets an opportunity to serve him. Though our ancient history does not focus on consumer protection exclusively but it does show how we responded to consumerism matters. Consumerism in India did not kick-start in the past but in view of prevailing socio-economic conditions, it had its own way to protect the rights of the buyers in a world of sellers. The consumerism did not happen as there was no specific social movement to protect the rights of buyers in relation to the sellers. But then a necessity was there to safeguard the interests of the buyers through social devices in order to generate the faith of the common man in the social movement of consumerism. Consumerists should suggest ways to improve the quality of products in order to improve quality of life by providing them unadulterated goods in the market place at reasonable price. Technology and marketing are complicated in way or the other and have created number of problems for the consumers also. Though, technology has created large variety of products for consumers to choose from but it has also led to new dangers and complexities. Often buyers can get confused as what to buy and what not to buy. The consumer cannot be expected to be an electrician, nutritionist etc to judge the quality of the commodity.

⁴⁴ Mc Gregor, *Neo-liberalism and health care*, 1 Journal of Consumer Studies (2008).

Our country always has economic content due to which the consumers feel that their income is deteriorating in terms of purchasing capacity of the rupee. The effect of the economic condition is mostly on poor and middle class section of the society. The cause of such economic discontent and social malaise are inadequate production and faulty distribution system which can be corrected by social change. A solution to solve this problem, one needs to think of consumerism and law and its instrumentalities which can produce actionable solutions in the interest of buyers and sellers both in the larger interest of coordinated economic growth of the country. The aim of the consumer law is to understand the position of the consumer in a commercial world and also to see that the system of law, substantive and procedural is so designed so as to ensure a fair and reasonable balance between the buyer and the seller.⁴⁵ The issue is not giving unreasonable rights to the consumer but striking a balance between the rights of buyer and seller in the present commercial world. The British Minister of Trade and Consumer Affairs said:

“The market is more sophisticated technologically, often more monopolistically organised. The consumer has more to spend: he stakes, very often, a larger sum of money on each consumer transaction. So the consumer often has more to lose in a more difficult economic environment. That is the reason why consumer is so much more with us today. Any consumerism obliges us to consider the procedures as well as the substance of the law. Consumerism obliges us to consider aspects of criminal as well administrative as well as ordinary civil law. Consumerism obliges us indeed to consider the adequacy of the legislative process itself.”⁴⁶ But many thinkers of consumerism believe that this as a social movement won't last for very long. Some believe that it will vanish eventually and condition of the poor people in a society will pose questions relating to distribution system and about its efficacy in all sectors of economy.⁴⁷ Ralph Nadar felt that consumer movement is changing and the new meaning given to be it is meeting place of the middle class for carefully testing and rational purchasing in the marketplace.⁴⁸

⁴⁵ Nayak, R.K. Consumer Protection Act, 1986: Law and policy in India. *J Consum Policy* 10, 417–423 (1987).

⁴⁶ Geoffrey Howe, “Consumer Protection and the law,” 123, *New L. F.*, 685(1973)

⁴⁷ R.K.Nayak, “Imperativeness of Consumerism II”, *I Indian Consumer Co-operator* 1 (Feb-March 1974)

⁴⁸ Colston E. Warne, “The Impact of Consumerism on the Market,” 8 *San Diego L. rev* 30 at 35(1970-1971)

India has large number of educated and affluent consumers who can take the consumerism forward by way of opposing malpractices observed in the marketplace, constant rise in prices of commodity irrespective of if it is affordable by one section of the society and not another. The entrance of new commodities in the marketplace pose serious questions with regard to health and safety and redundancy keeping in view the 40% of the country's population which is below poverty line. It is high time that we protest against the unchecked price spiral and particularly to affluent checks against the injurious commodities. The protest is not sole solution to the same but an independent machinery should be set up to keep a check in price rise. The consumerism needs a new institution which functions solely to protect the rights of buyers and sellers on one hand and producers and manufacturers on the other hand.

Businessmen view that consumerism is a costly affair to the consumers. They will not be able to do any malpractices or corruptive practices in the market place and will be forced to follow all the legal requirements which shall limit their methods of selling the commodities and ultimately consumers will be left with less choices.⁴⁹ But consumerism concept itself is largely misunderstood because it is a social movement which intends to benefit the buyer and the seller at large to solve the strains which often occur due to complex socio-economic order. The consumer movement provides an opportunity to businessmen to think about their responsibilities towards the society as they play an important role in the production and distribution system. They help in sustaining and improving the quality of life by providing legitimate quality of commodities. Therefore, the concept not only presupposes the protection of rights and buyers but also fit drinking water, pollution less air and adequate health care and things which are essential for general welfare of the community at large of which consumers are parcel and inseparable parts. Hence, consumerism has to be achieved through social welfare devices.⁵⁰

3.2 Globalisation

Globalisation can be defined as a phenomenon where regional countries, societies and culture integrate through communication and trade at global level.⁵¹ This term is usually

⁴⁹ R.K.Nayak, : Imperativeness of Consumerism II', 1 Indian Consumer Co-operator 1 (Feb – March 1974).

⁵⁰ Id.

⁵¹ Albrow, M., & King, E. (1990). Globalization, Knowledge and Society. London: Sage Publications

referred to economic integration of under developed or developing economies with international economies through trade, communication, transportation, foreign direct investment and use of new technology. It promotes circulation of ideas, languages or popular culture.

According to Oxford dictionary, “globalisation” word was inserted in 1930 to denote human experience in education. Charles Taze Russell was a famous American entrepreneur who coined the term ‘corporate giants’ in 1897 itself, but only in 1960’s the term gained momentum and was used popularly by economists and social scientists. The United Nations ESCWA defines globalization as, “In an economic context, it refers to the reduction and removal of barriers between national borders in order to facilitate the flow of goods, capital, services and labour, although, considerable barriers remain to the flow of labour.” So mainly globalisation is a socio-economic process where economic development and cultural exchange of a country takes place simultaneously. It has been observed that ‘internationalisation’ and ‘globalisation’ are often used interchangeably but the former refers to international trade and relations only but does not include flow of trade and labour whereas latter includes both.

Globalisation was first observed in the form of trans national trade in China when it established trade relations with then Europe and Asia. However, between 1776 and 1789 AD French revolution and US revolution happened and military states had been thrown out and welfare state were established who started taking business interests.⁵² Industrial revolution led to expansion of integrated interests and international law was borne. But some scholars claim that globalisation traces its history back to ancient civilisations like Indus Valley Civilisation Roman dynasties and Han dynasties had regular business links between them.

The medieval period saw trade links between Islamic countries where Muslims and Jews started travelling to different parts of the world to sell their goods and integration of culture, ideas and traditions. Basically this age was period of discovery. The postal service was first invented in China which led to more communication between people and exchange of languages. Some scholars also give credit to colonization for pre-globalisation area. Colonies were growing in Africa, Asia and Latin America. So there was constant blend of ideas, customs and languages between foreigners and native

⁵² Waters, M. (1995) Globalization. Routledge, London, 140.

people. The system of colonisation deeply affected trade, technology and agriculture in all the colonies.⁵³

Eventually the pre globalisation era came to an end post First World war and the whole world witnessed Great Depression and financial crisis between 1920 to 1930. Finally, the globalisation came into existence after second world war and countries like Srilanka, India and South America became independent. As more and more countries gained independence, they had their independent government which tried to establish economic relations with other nations. International organisations like United Nation Organisation, European Union, UNICEF and many more were established to supervise international relations between the countries. Gradually, the trade relations and communications were established between the nations which led to control in tariffs and taxes, development of infrastructure and creation of Multi-National Corporations. The establishment of World Trade Organisation changed the perspective of trade disputes thereby bringing uniform system of settlement.

3.3 Globalisation Culture and Consumerism

The trend of globalisation began in 20th century where countries were removing their trade barriers and encouraging free market system and most importantly it allowed competition among the sellers for products, their quality and services. The consumers across the world got varieties to choose from, prices were lowered and quality of the products became focus point for all the businessman in order to satisfy their customers. Globalisation has led to a phenomenon where brand find it easy to manufacture their products where labour is cheap and then sell it off anywhere in the world. This is the only reason that fashion industry has developed vastly in the world, and has further contributed to consumerism rise. Consumers have flexibility to choose various alternatives at reasonable options and slew of expectations have been created due to the same. Marketers have observed increase in types of goods within an existing market, such as laptops or touch-screen mobiles. The same marketers saw the integration of similar products like touch screen tablets and touch screen laptops. Abundant opportunities are created by international free trade but many ethical issues have been

⁵³ Scholte, J. A. (2005). Globalization: A Critical Introduction. Palgrave.

reported by global businesses. In order to understand the globalisation and its impact on consumers, ethnic groups or citizens of the country, foreign exchange markets and analysis of the trade for that particular region needs to be studied. Marketers face problem when they advertise their goods in different part of the world so as to appeal ethnic groups and cultures.

Hence, globalisation is a process by which cultures influence one another and become more alike through trade, immigration, and the exchange of information and ideas “Culture and globalization.”⁵⁴ This phenomenon has been largely affecting the cultures of the society and members of the society are not really aware about changes and their impact on them.

Globalisation in the contemporary world is contributing largely to consumption and its homogenisation. This phenomenon again has alignment with lifestyle, social groups and their age while role of local traditions has reduced and diminished in consumption behaviour.⁵⁵ Since a decade, India has witnessed fast food industry growth at manifold level and one can say that food industry is now dominated by fast food start-ups. This indicates, that consumers are accepting standard goods which leads to development of market and lowering of prices, through developing economies.

To observe the effect of globalisation clearly, food industry is best to observe upon. The food consumption is affected by many factors like technological process, mobility, establishment of international retain chains and standardisation of their offers. The introduction of internet led to free and cheaper communications cross the world and therefore people started sharing their experiences. Further consumers were affected by movie trends, multiplexes and food blogs on social medias. Eventually, people were drawn towards modern and convenient lifestyle.⁵⁶ McDonald (2002) claims that mass culture “is a dynamic, revolutionary force that eradicates class divisions, tradition, taste and blurs cultural distinctions”, which means that it has significant impact on the

⁵⁴ Aimaq, Jasmine. 2003. Review of Peter N. Stearns, *Consumerism in World History: The Global Transformation of Desire*. EH.Net Economic History Services. http://eh.net/book_reviews/library/0569

⁵⁵ Gałązka & Grzelak, 2013. *The Tendencies of Food Consumption in Poland on Background of Global Conditionings*, Economic Yearbook of the Kujawsko-Pomorska University in Bydgoszcz, (6), 223-241.

⁵⁶ Mazurek-Łopacińska, K. *Buyer Behaviour and its Marketing Consequences*, PWE, Warszawa (2003).

development of consumers' behaviour, their lifestyles and preferences.⁵⁷ Hence, one can see globalisation and consuming behaviours supplementing each other with creating of new products, new sales, new needs and new styles of consumption but increasing competitiveness amongst the market and consumers as well.⁵⁸

The impact of globalisation can be observed in three areas on the behaviour of consumers generally i.e. market environment, the ways of satisfying needs and hierarchy of needs.⁵⁹ The first factor has seen establishments of hypermarkets, supermarkets and fast food restaurants and legal protection given to consumers. All are related to retail and service industry. The second factor is associated with brand management and expansion of shopping and eating habits of the consumers. The third factor is result of adoption of western culture in Indian culture and implementing their lifestyle into ours. Many researchers⁶⁰ show that large number of youth has been motivated to go to supermarkets as they find large quantity of goods in one place only, large offers which attract consumers largely and constant communications made to them through messages or calls eventually make customers visit the stores.

Globalisation process has led to development of fast food restaurants at very large pace especially in U.S.A. In 1970 it had only 30, 000 fast food outlets but in 2004 it was reported that 2,33000 outlets had opened up at different locations.⁶¹

Extreme liberalisation of economic relations and globalisation has led to consumer consciousness increasing about food and health. Consumers are constantly demanding food safety remedies; states are taking initiatives on organisational structures in the area of food safety. The schools are educating children on the knowledge of food and environment and their impact on health conditions. China has been a very good example in using the knowledge of food safety as they receive all information through mass

⁵⁷ (Michałowska & Danielak, *The Impact of Globalization on Consumer Behavior in Lubuskie Province in the Light of the Research*, Annales Universitatis Mariae Curie- Polonia Vol. Xlix, 3, Section H, 136(2015)

⁵⁸ Włodarczyk - *Goablisation and Economic patriotism of polish consumers*, No. 214 Economic Studies - Scientific Papers in Katowice, 66-67, (2015)

⁵⁹ *ibid*

⁶⁰ Wrzesinka , *Young consumers preferences regarding to shopping in supermarkets (personal empirical research)*, Scientific Journal of Warsaw University of Life Sciences, Series Economics and Organization of Agri-Food Sector, No. 59, 89-100.(2006)

⁶¹ French et al., 2001

media and newspapers but the only drawback is that they have high information on safe food but do not understand the concept of safe food well.⁶²

Globalisation has led to economic, social and technological changes in the world thereby influencing the habits and preferences of consumers largely. Global trends show that consumers are looking for more time saving and comfortable ideas of consumption and avoiding traditional methods of cooking, fresh food with more nutrients and compromising with the quality of the food⁶³. But some researchers find that globalisation has motivated some consumers to only opt for the foods which are less processed, have higher nutrients and taste better. They prefer cooking without hurry and using only fresh fruit and vegetables⁶⁴.

It is surprising to notice such kind of transformation. Consumers often apply their experiences to material possessions and therefore food producers create new products to meet demands of the consumers.⁶⁵ Often restaurants make lucrative offers on their food items to attract consumers by creating unique menu or unique interior designing so as to provide comfortable seating arrangement.⁶⁶ So basically globalisation can be considered as a process where national and international markets are integrating to form one global market which leads to homogenisation of consumption and change in food behaviour of the consumers. The food consumption has been affected by many factors like mobility, technological development, expansion of international chains and standardisation of offers. One can see that globalisation has impacted largely the behaviour of consumers as mostly fast foods are preferred with comforting sitting area and new experiences complementing to material possessions. But globalisation has also created certain new moves, domestic food products or ecological products to satisfy consumer needs.

The globalisation has its own disadvantages which are discussed as below;

⁶² Liu, R., Pieniak, Z., & Verbeke, W. *Consumers' attitudes and behaviour towards safe food in China: A Review. Food Control*, 33(1), 93-104 (2013).

⁶³ Buckley, M., Cowan, C. & McCarthy, M. *The convenience food market in Great Britain: convenience food lifestyle (CFL) segments*, *Appetite*, 49 [3], 600-617 (2007).

⁶⁴ *Ibid*

⁶⁵ Tkaczuk & Koluda *New Consumer Trends and the Success of the Organisation*, 31 (2013).

⁶⁶ Mazurek & Lopacinska., *Postmodernist Consumption Culture in Shaping Demand and Contemporary Consumer's Lifestyles*, [1], 53 (2013).

Multi-national companies are often known for their poor working conditions, inequality conditions, ignoring environmental issues and unprofessional handling of natural resources. Some economists feel World Trade Organisation, World Bank and International Monetary Fund only bring out policies in the favour of developed countries and only corporate interests.

International organisations like IMF, WTO and World Bank are only known to give importance to economic growth of a country, and do not consider Gross National Happiness as a factor for the growth at all. One needs to understand that Gross Domestic Product of the country does not indicate real growth of the country and it is also considered that it makes rich richer and poor poorer. The multi-national companies have set up their manufacturing units' in developing countries due to cheap labour force. So, globalisation has led to more of corporate control of an economy than of civil society associations. The social and ethic views of the people have been not properly communicated to citizens of the country as media has privatised. The cultural inherent traditions have been diminished and devalued to a large extent.

Globalisation has changed the mind-set of the people and drifted them more towards materialistic way of living. People assess their success with the amount of materialistic things they have and also associate their success with the things they have. People are getting more attached to social media, due to which human connection between people has been totally lost.

It is also found that international organisations have lost individual and national independence.

Many economists fear that globalisation may lead to third world war as there might be a conflict with regard to resources.

The critics of globalisation have said that process of globalisation has generated large corporate interests, raised the global institutions alternatively, and do not really address the problems of poor people in an effective manner. Globalisation has led to income inequality within the nations and in between the nations. United Development Programme Report 1992, had showed distribution of global income was found in a very unequal manner as 20% of the world's population was controlling 82.7% of the world's income.

The globalisation process has affected the environment in a negative manner. Deforestation has occurred worldwide due to demand for disposable products and overuse of natural resources due to growth of populations has seriously affected and led to loss of biological diversity.⁶⁷

“Under the current international law, trans-national corporations are free to promote their interests in any part of the world. They have continued to establish industries in various countries by destroying the natural forest and dismantling the source of the peasant farmers’ survival. Various plant and animal species are doomed to extinction owing to the loss of forest.”⁶⁸ A very famous scholar Kalbessa had studied in depth the impact of globalisation in his own country Nigeria and observed that globalisation was responsible for depletion of rainforest in their country. The deforestation further led to drier climates as there are no trees left to maintain atmospheric moisture and groundwater level has also reduced to dangerous extent. And eventually the ozone layer has been depleting continuously due to consistent pollution and industrial activities.

Globalisation has led to all kinds on environmental pollution leading to generation of physical and chemical agents which are harmful to human, animal or plant life and affect the natural process of the nature.⁶⁹

Oil industries activities of producing oil- mainly like exploration, production, refining and transportation has caused social and ecological disturbances. Examples of such destructions are explosion from seismic surveys, floods, pollution from pipeline leaks, and industrial infrastructure installations. The News Magazine of 18 April 2011, stated that the NNPC, in its May 2010 report, stated that of the 192 billion standard cubic feet (BSCF) of gas produced during the period, over 145 BSCF was flared. Gas flaring is detrimental to environment and leads to food insecurity, diseases, skin cancer, and extreme climatic conditions. Hence, gas flaring is found to be unethical and leads to

⁶⁷ Giddens, A, *The Consequences of Modernity*. Cambridge: Polity Press (1990).

⁶⁸ Kalbessa W. (2007) “Dialogue Among Civilisations and the Process of Globalisation”, in Moazami, Bahman and Rassouli, Navid (eds.). Collection of Papers of the International Conference on Dialogue Among Civilizations from the Viewpoint of Young People. Tehran: Alhuda International Publishers and Distributors

⁶⁹ Otukong, I. T. O. *Environmental Pollution and Emerging Health Hazard: The Nigerian Scenario*, The Journal of General Practice, 7 [1] (2002).

degradation of agricultural land in the vicinity of that area which makes it unfit for vegetation.⁷⁰

Another challenge of globalisation is electronic waste which has raised serious concerns across the globe. Electronic waste means secondary computers, mobile phones, refrigerators which are discarded by the owners.⁷¹ According to Achim Steiner (2007), UN Under-Secretary-General and Executive Director of the UN Environment Programme, “globalization is triggering a massive rise in electronic wastes, some of which are being dumped in Asia and Africa: one investigation indicates that at least 100,000 computers arrive at the port of Lagos alone each month. Up to three quarters of the imports — which also includes old televisions and mobile phones — will end up in an African rubbish tip or open air incinerator”. As a result, though science and technology are developing and advancing, old machines are becoming obsolete within short period of time creating large surplus of unwanted products.

Many developing countries are compromising with the standard of environmental regulations and as a result the developed countries are dumping their e-waste in developing countries without any concern for negative impact on the citizens and the environment of that country. When the e-waste is handled improperly it leads to release of lot of toxins, further impacting seriously the health of the citizens, Consequently, the unusable and unserviceable have to be dumped in dumpsites which are then visited by poorest people like scavengers, in search of some material that can be sold. An estimated 53, 600 metric tonnes of e-waste are dumped annually at Lagos State landfills which include 860,000 computers, 530,000 printers, 900,000 monitors and 480,000 television sets.⁷²

3.4 India and Globalisation

In 1981, India faced lot of difficulties with respect to balance of payment. The exports lagged considerably behind and imports of oil were increasing at a higher rate leading to trade deficits at astronomical heights. By 1990-1991, the deficit had gone larger and

⁷⁰ Eregha, P. B. and Irughe I. R. *Oil Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effects*, Journal of Sustainable Development in Africa, 11(4) (2009).

⁷¹ Omatek Ventures (2011). “Understanding E-Waste”

⁷² LASEPA. (2011). EKO Declaration on E-Waste 2011

larger and Indian economy was in dismal plight as there was no competition, and manipulated polity, politicians and bureaucracy. Large amount of capital was flowing out of the country and country was only facing losses. Finally, Indian economy experienced a major change in policy in 1991 which was also called as Liberalisation, Privatisation and Globalisation.⁷³ The new policy aimed to reduce the stifling atmosphere of regulatory and bureaucratic control and create a new environment for market oriented economic growth, linking the economy to world markets. The then Prime Minister P.V Narsima Rao, introduced economic reforms that reversed the model of socialism on which Indian economy was based till all these years. The period of 1990-1991 saw a new dawn for Indian economy as it made our country today economic giants of the world. The major measures taken as part of this policy were: -⁷⁴

1. The value of our currency was devalued against the major international currencies in order to resolve the balance of payment crisis.
2. The process of globalisation was attempted to smoothen by introducing privatisation scheme where many public sector undertakings were sold to private players.
3. The industrial policies were liberalised to large extent as now no industry required permission by the government if set up beyond 25 kms from the city.
4. Foreign Direct Investment was allowed across all types of industries in India to increase employment, flow of cash and GDP of the economy.
5. The MRTP Act was abolished as per the process of liberalisation.

It was essential to open the doors to the MNC's which would supplement domestic resources, bring in sophisticated technology, better management and more efficient manufacturing processes. This step not only helped in augmenting investment resources and increase production of goods but also resulted in increased exports.⁷⁵ To gain economic prosperity, India had to be part of world economic market. But we have not fully grasped the enormity of problems and dangers inherent in such a process of globalisation. The developing economies consider India only a market for

⁷³ Raghunath. "Globalization and its impact on Indian economy." International Journal of Research - Granthaalayah, 5[6], 544-549. (2017). "<https://doi.org/10.5281/zenodo.822676>

⁷⁴ ibid

⁷⁵ Government of India, Export- Import Policy Statement, July 3, 1991

manufacturers and do not easily invest high tech capital and infrastructures. In such a situation the greater the extent of foreign capital in the country, the greater the element of uncertainty. Firstly, the MNC's in India are dominating the national economy with diverse adverse effects on domestic industry. Indian industries are handicapped high interest rates, liquidity crunch, restriction on inter-corporate loans and investments, exacting labour laws etc.⁷⁶ Secondly, MNC's are not very content with majority stake up to 50% in joint ventures. So, foreign collaborators established wholly owned subsidiaries like Sony, Maruti Suzuki etc. Thirdly, MNC's are generally driven by overriding motive i.e. profitable sales, which is leading to depletion of India's natural resources and they are only concerned with their hold on national economies but no on the national goals of the companies.⁷⁷

As experiences show, during the last six years the trend in the MNC's have been instead of new investment, to capture the already established companies in the country. They have their interests mainly in the consumer goods industries ranging from manufacturing potato chips and cold drinks to KFC. These would not accelerate the economic growth in our country. On the contrary, they would produce distortions in various ways. The very nature of foreign capital investment is that it neither helps to meet the basic needs of the vast majority of people the country nor does it help to generate employment opportunities. The profit oriented market economy itself does not work in the interest of common man.⁷⁸ Thus, globalisation process is fraught with dangers of producing many various and new problems if at all the foreign capital inflows are possible in the country. Our policy of economic liberalisation and hence globalisation of the economy rests on the "market friendly" approach. But by and large, the current global markets are unfriendly to the developing economies.

A glance at the foreign inflow capital in India is an eye opener. The manufacture of food articles like Pizza by Pepsi in Bangalore will deliver a blow to the indigenous family or small scale production units which provide better nourishment through the use of lentils and wheat bread as against the pristine food culture of India. The farmers

⁷⁶ Shridhar Pandey, "The Globalisation Drama in the Indian Economy," Nava Arthiki, Autumn Number, 1996.

⁷⁷ A.K.Chandra, "Western Imperialism and India Today", Economic and Political Weekly, Annual Number 1973.

⁷⁸ Pran Nath Luthra, "Global System : Conflict with National Interests", The Statesman, Calcutta da ked., July 21, 1996

in Karnataka had violently demonstrated against the MNC for producing Kentucky Fried Chicken, Pizza and the like. However, sooner it was realised that the liberalisation of the market and the entry of MNC's must be emphasised from increase of higher GDP growth to social issues.

However, one cannot say that globalisation does not and cannot benefit India as consumers all over the world large benefits from the free entry of consumer goods. There was significant rise in per capita income and reduction in poverty. The main move of 1991 policy which brought a significant change in cultural, political, social and economic aspect of our country was Foreign Direct Investment.⁷⁹ Consequently, the Indian industry globalised at large scale. The integration of global economies with domestic economy helped to improve Gross Domestic Product which set up a good position in the world. Large number of foreign investments were observed in BPO, pharmaceutical, petroleum and manufacturing industries which resulted in boosting of Indian economy. After liberalisation, many foreign industries set up their manufacturing units in India thereby providing employment to large masses of people and supporting in reduction of poverty. India saw development of IT industries and this helped in development of skilled professionals who provide service to European and US clients. Many foreign countries have taken advantage of highly talented young professionals of India at lower costs and uses communication technologies such as mails, internet, voice over IP and they outsource knowledge-worker operations by lowering the costs. Indian market industry grew due to introduction of highly advanced technology.

Globalisation largely helped India to increase its exports and many Indian companies expanded their businesses across the territory and gained popularity for their products like Reliance Industries, Tata Motors, Mittal Steel industries, Infosys, Aditya Birla group. Food items were exported from India at increased speed and consumption of fast food items, soft drinks and meat in India.

Globalisation brought a big cultural change in Indian society as suddenly the access of television grew to 90% of the urban population (2009). Even the rural areas have now access to television. Internet facilities have extended to urban and rural areas and one

⁷⁹ Ahluwalia, M.S., "Economic Reforms in India since 1991: Has Gradualism worked?"; Journal of Economic Perspective. 16(3): 67-88 (2002).

person from each household in rural area and almost all the people in urban household have access to internet. Large multiplexes and malls have been set up in all the cities and it has further improved standard of living for large masses of rural people who have migrated to cities to earn a good living. Entertainment industry has improved and expanded to large extent in India. Our celebrities endorse ads for foreign products and services. Shahrukh Khan is the brand ambassador for Dubai tourism industry and Virat Kohli is for Lays produced by PepsiCo. Many short films are shown in international film festivals and western culture has also been incorporated in Bollywood films. Many international companies like Disney, Fox Industries and 20th century invest in our entertainment sector.

Fashion industry went through tremendous change post 2000s. People started welcoming international brands like Gucci, Nike, Reebok, Woodland, H&M and adopted their fashion styles.

Globalisation affected education industry immensely as many foreign universities are now collaborating with Indian universities for different areas of field. Even many schools are encouraging student exchange programs where foreign students come to India to learn about Indian culture and society whereas Indian students go to foreign countries to study their culture and society in depth. Now, the Indian traditional education is taking a shift from formal classroom program to informal classroom program and industrial society is moving to information society. Many public schools have introduced E-learning, Distance Education learning and Overseas training programs. Women have gained opportunities for jobs and their right have been recognised as human rights at global level. The growth of technology has enabled a woman to demand better wages, improve their social status and empowered them professionally at home and corporate level.

3.4.1 Positive Impact

Globalisation has turned out to be boon for Indian economy in following ways: ⁻⁸⁰

1. GDP has increased from 5% to 7% during the period of 1993 to 2001. In 2006-2007, it was found to be 9.2%.

⁸⁰ Raghunath. "Globalization and its impact on Indian economy." International Journal of Research - Granthaalayah, 5(6), 544-549. (2017) <https://doi.org/10.5281/zenodo.822676>

2. The Reserve Bank of India stated Indian foreign exchange reserves as \$ 35.83 billion in 2016.
3. The cumulative inflows from 1991 to 2006 were \$ 43.29 billion which shows a good rate of growth for a developing economy.
4. India's share was 55% in Global Outsourcing market in 2010.
5. In 2005, India obtained the place of fourth position in market capitalisation.
6. In 2015, it was detected that India had 100 billionaires who were making large contribution in FDI sector.

3.4.2 Negative Impact

1. The census data has found that India has 12.59 billion child labourers in 2001 which has actually risen from 11.28 million. Poverty and lack of security is the main reason for child labour. Post liberalisation, increase in private sector was observed who work for profit motive only and increase in child labour was observed.
2. Agricultural sector was the backbone of an economy. But this sector was ignored largely post liberalisation. There was huge public investment but not in agricultural sector which eventually lead to backwardness of agricultural sector and thereby affecting economy at large as many farmers got unemployed.
3. Job scarcity and job security has increased in modern era which is eventually perpetuating crimes, dowry systems and unemployment.
4. Forbes 2015 had stated that India has 100 billionaires but one of the worst impact of globalisation has been that rich are getting richer and poor are getting poorer.

India shows a remarkable resilience which has been well proved by history, recent and remote. The economic reforms which were introduced by P.V Narsimha Rao shaped economy of our country till large extent. But we cannot run our country by wholly imitating the Western Model for our existence as we might fall in pitfall during financial crisis and down market. It is important to liberalise, privatise and globalise our economy but not at the cost of tampering our Indian culture. The system of our economy should be attempted to Indianize. Indian economic system has been integrating largely with Western economic forces but we are losing our identity. Bureaucratic system has taken a toll on our democracy and wholesale transplantation of Western technology and

consumeristic culture based on the principle of profiteering cannot be a solution to the problems. Though modernisation brought expected economic and political advantages for the country but it also revealed its ugly side i.e. vast economic and social inequalities within the country. It led to creation of those men and women who sold off their traditional values and skill to depressingly shallow and confused in order to have economic gains. The economic planners only check the economic parameters but do not consider ecological degradation and unsustainable developments which affects the economy largely. The need of the hour is to have a multi- disciplinary, multi- pronged, holistic approach that shall solve the problem at the root itself.⁸¹ Indian problems should have Indian solution to it. A surfeit of luxury goods and consumer durables is not going to fill the empty stomachs. It might give some relief for the time being but not remedy in the long run. Hence, we must globalise but with caution. At present, the openness of economy shows that it is more for foreigners and less for Indians. Hence, though we must think globally, we should act locally.

3.5 E-commerce Consumers Protection in Globalised India

Ecommerce was first defined by Roger Clarke as “the conduct of commerce in goods and services, with the assistance of telecommunication and tele communications based tools.”⁸² The system consist of selling and buying of information, products and services through computer networks. E commerce- has essentially automated commercial practices by displaying products on the web, registering orders, processing payments online and co-ordinating inventory and delivery.⁸³ The growth of e-commerce across the globe has been exponential, revolutionising the traditional process of buying and selling of goods and services. The growth in ecommerce has been unprecedented undoubtedly benefitting the consumers leading to more competitive prices, availability of wider range of goods and more convenient services.⁸⁴ In America, the drug advertising has been affected largely by e-commerce where manufacturers of medicines for depression and headache provide detailed information on their respective websites.

⁸¹ "India: India's Development Experience By Tarlok Singh. Macmillan, Delhi. 1974. xx, 458p.

⁸² Helge Huffman, Consumer Protection in E-Commerce, University of Cape Town, 2.

⁸³ David E. Sorokin, *Payment methods for Consumer to Consumer Online Transactions*, Akron Law Review. (2001).

⁸⁴ Jeffrey A Modisett, *Cyberlaw and E-Commerce: A State Attorney General's Perspective*, 94(2) North Western University Law Review, 643, 642 (2000)

Further the costs of communication and advertising has reduced and consumers are able to gain the information easily.⁸⁵

E-Commerce in India has enabled businessman to bypass the traditional intermediaries in domestic jurisdiction, while being able to access global markets. Due to lower transaction costs, e-commerce has widely increased in the number of sellers and suppliers in the market thus increasing diversity and competition in the market. Therefore, E-commerce has been rightfully recognised as the new face of entrepreneurship which encompasses existing companies, organisations, small businesses and individual online traders. At such stage, it is important to protect the interests of the e-consumers which would confidently impact the confidence of e-consumers causing an increase in online trade.

3.5.1 Consumer Interests and Risks in E-Commerce

Studies have revealed that e-consumers face a numerous task such as masking, catching, disclosure of private information without consent, phishing, hacking of bank accounts, misrepresentation of products, non-delivery of goods and poor quality of services.⁸⁶ There are online market places like Amazon, eBay, Flipkart where often violation of consumer interest has been reported. In order to understand the challenges of e-consumers in India, let us study eBay model which is an online intermediary that has achieved unprecedented success within few years. But it had many controversies relating to abuse of consumer interest and copyright infringement.⁸⁷ The sellers sell their products and services online independently through auction or fixed price and eBay only serves as online market place. Though it is not involved in direct selling and buying, it does earn its share of revenue from sellers. But it does not take any responsibility in case of violation of consumer interests. It does not take any responsibility for the items listed on the website.⁸⁸ The information about the product is called “third party user generated agreement”⁸⁹ and thus enables eBay to deny responsibility for any misrepresentation regarding the attributes of the product and fake

⁸⁵ Gregory E Maggs, *Internet Solutions to Consumer Protection Problems*, 49 South Carolina Law Review 888, 890 (1998).

⁸⁶ Shashi Nath Mandal, ' *Protection of E-Consumers' rights in electronic transactions*, 7-12, available at: <http://ssrn.com/abstract = 662881> (Last Visited on 09-02-2020).

⁸⁷ Ibid

⁸⁸ User agreement of eBay. Available at their website

⁸⁹ Ibid

sellers. Thus eBay has constructed a legal framework to protect itself from any liability arising out of consumer dispute.

However, it has been involved in many serious legal disputes over abuse of consumer interests.⁹⁰ Mostly consumer complaints against eBay are filed for committing frauds by sellers as they do not provide the quality of the product as per information written on the website. Manipulation of the rating system and cases of identity thieves are found. The reason for the same can be said to be the standard of care and protection to consumers is not appropriate.

The reach of the virtual market has been very expansive which has arisen issues concerning location, legitimacy of online businesses and information about the terms and conditions of the purchase, warranties and return policies and security of information disclosed in the transmission process and the privacy of the personal information.

Consumer Protection Act 1986 along with the Consumer Protection Rules 1987 and Consumer Protection Regulations, 2005 constitute the domestic legal framework for protection of consumer rights. The judicial system in India has tried to apply the above law to e-commerce disputes but many practical problems still persist. In order to obtain protection under the domestic law, all parties involved in e-transactions need to be based within the national boundaries so that the jurisdiction of the domestic consumer protection law applies.⁹¹ However, this does not account for majority of the e-commerce transactions, where parties are located in different jurisdictions.

The Consumer Protection Act, 1986 does not apply to role of intermediaries like eBay. The Act only covers vendors and manufacturers and corresponding deficiency in goods and services but it is completely silent on accountability of online market places such as eBay. In order to hold intermediary accountable, reference has to be made to Information Technology act, 2008 which was enacted following the adoption of UN resolution on model e-commerce law. But consumers do not have any relief under the consumer law for the same. Section 75 of Information Technology Act, 2008 addresses issues of jurisdiction of Indian Courts to an offence committed outside India by any

⁹⁰ Shashi Nath Mandal, ' *Protection of E-Consumers' rights in electronic transactions*, 7-12, available at: <http://ssrn.com/abstract=662881> (Last Visited on 09-02-2020).

⁹¹ Ibid

person of any nationality but it does not issues relating to consumer grievance. Hence, it is the need of the hour to amend the consumer protection law in India to include the liability of the online intermediaries.

3.6 Jurisdictional Issues in E-Commerce

Consumer Protection in e-commerce with the growth of cross-border transactions is no longer a domestic issue and subjects like extraterritorial application of domestic consumer protection legislation and enforcement of judgements of foreign courts have emerged. There are large number of e-commerce cases occurring everyday but only few of them are reported to the courts. The reason for the same is in-consistencies in jurisdiction and the unsuitability of the existing framework of domestic consumer legislations. The Consumer Protection Act, 1986 is built on a certain outdated presumption which are not applicable in virtual market place and majority of the sellers are located in different jurisdiction. Therefore, it is extremely difficult to apply the present consumer law over online cross border transaction. The cross-border transactions are leading to challenges on legal understanding of the subject like law and legal forum, contract construction and interpretation and dispute resolution mechanism. The e-commerce has created a virtual market place which has no territory, fixed national boundary while the domestic law is strictly based on disputes in national jurisdiction. As a consequence, Consumer Protection Act is not compatible with the e-commerce transactions.

The most contentious issue in terms of jurisdiction is in respect of location of the parties which in majority of the cases is unknown, websites, and electronic addresses not necessarily relating to the place of the address. In Indian scenario, it is better to adopt a judicious mix of the American and the EU approaches so that a balance is struck between the growths of e business and the protection afforded to e-consumers.

3.7 Consumer Protection Act, 2019 and E Commerce

The Consumer Protection Act, 2019 with the aim to protect the consumers in this e-commerce world have included stringent provisions relating advertisements and marketing practices so as to ensure fair business, sufficient disclosure of relevant information by the sellers on virtual market places to avoid unfair trade practices,

promoting secure method of payment to minimise financial loss, and reliable redressal mechanism which has scope of Alternate Dispute Resolution to provide an alternative to litigation especially in case of long distance transactions. Consumer Protection Act, 2019 also requires electronic service providers to provide the District Consumer Disputes Redressal Commissions with documents, information or records in relation to any complaint received regarding any goods or services, including unfair trade practices (which covers sharing of personal information given by the consumer in confidence) alleged by consumers. Under the new COPRA, the Central Government can introduce rules/ notifications to prevent unfair trade practices in '*e-commerce*' space, i.e. retaining flexibility to issue "bespoke" rules in future aimed at e-commerce platforms/ aggregators (covering both goods and services) from a consumer protection standpoint. The Consumer Protection (e-commerce Rules) 2019 are very effective in nature and have prescribed general detailed conditions for E-commerce business to avoid any kind of confusion and the duties and liabilities of e-commerce are also laid. The e-commerce entities have to publish grievance officers contact details and once the complaint is registered, the consumers can track their complaint.⁹²

3.8 Conclusion

Consumer is exposed to large number of opportunities and choices in the global market, he is exposed to similar complex choices in local markets too but now the national consumer policy is not sufficient enough to cover the complex situation due to consumption function. Consumers are being empowered through consumer education and information which have eventually encouraged the consumers to buy products through online shopping sites across the country, but national consumer law at times becomes an obstacle with regard to jurisdictions which leads a consumer in dilemma to buy or not. Hence, the countries at global level and national level jointly should take an action in order to avoid international trade disputes. Although the solution seems to be very difficult to achieve but it shall create a safe and protective environment across the world. India has taken long jumps in the process of globalisation. The national markets have integrated with international markets for goods, services and commodities and

⁹² Department of Consumer Affairs, The Consumer Protection e-commerce Rules (2019) <https://consumeraffairs.nic.in/draft-rule> (last visited on 17th April 2020)

integration is becoming stronger and stronger due to globalisation. India from Great Depression in 2008 needs to realise that she has to be self-reliant. The trade reform programme of India played an important role in the growth of globalisation age. But we even need to balance our trade and expand it across the countries. The interests of the consumers in the whole process is being diluted and it is noticed that developed countries are monopolising in providing communities. Few of the commodities, are essential for human beings and the developing nations like India lack appropriate technology and information to produce the same.

The Consumer Protection Act 1986 had various jurisdictional issues relating redressal mechanism and further it was unable to protect the consumers in this globalised world due to large shift from traditional shopping to online shopping and hence there was a need for the new consumer legislation in order to provide appropriate protection to the consumers. Hence, the Consumer Protection Act, 2019 made pecuniary changes and subject matter changes to the jurisdiction of the redressal mechanisms and also introduced new practices to be followed by electronic service providers and sellers in order to ensure fair marketing practices in the virtual market.

CHAPTER IV

Consumer Protection Act 2019 – A Critical Analysis

4.1 Consumer Protection in Ancient India- A Historical Background

Ancient India followed Dharma Shastras which were based on social norms and rules and eventually served as basic guiding principles governing human relations.⁹³ These principles were based on Vedic laws and Vedas were called as words of God which were transmitted to people through Vedic texts and hence they were called as primary sources of law.⁹⁴

Smriti and Shruti are considered as ancient texts on which kings and rulers used to refer for ruling the states and consumer protection was one of the major subjects in these writings.⁹⁵ The social, political and economic conditions of the society are well described in Manusmriti.⁹⁶ This was a text which prescribed code of conduct for sellers and also prescribed punishments for violation of those conducts. There is a mention about adulteration as least harsh crime in the text and fraud in selling damaged goods was taken a very serious crime.⁹⁷ In ancient period, the king could confiscate the entire property of a trader if he had a monopoly over the exported goods and if the exported goods were forbidden. The prices of the goods were fixed by the king in the market.⁹⁸ These measures show that Indian society was very effective in regulating the market and the consumer protection was always a concern for the king and rulers in their provinces.

Kautilya's Arthashastra also mentioned similar practices and consumer protection occupied a prominent place in the same. It prescribed the role of state in regulating the

⁹³ A. Rajendra Prasad, "Historical Evolution of Consumer Protection and Law in India: A Bird's Eye View", *Journal of Texas Consumer Law*, Volume 11, No. 3, Summer, 2008, pp. 132-136 at p. 132.

⁹⁴ A. Rajendra Prasad, "Historical Evolution of Consumer Protection and Law in India: A Bird's Eye View", *Journal of Texas Consumer Law*, Volume 11, No. 3, Summer, 2008, pp. 132-136 at p. 132

⁹⁵ Dr. Shradhhakar Supakar, *Law of procedure and justice in Ancient India*, 38(Deep & Deep Publication, New Delhi, 1986)

⁹⁶ A. Rajendra Prasad, "Historical Evolution of Consumer Protection and Law in India: A Bird's Eye View", *Journal of Texas Consumer Law*, Volume 11, No. 3, Summer, 2008, pp. 132-136 at p. 134.

⁹⁷ Gurjeet Singh "The problem of Consumer Protection in India : A Historical Perspective" *Consumer Protection Reporter* 704 at 705, n.6 (1994 III)

⁹⁸ Rajendra Nath Sharma, "Ancient India According to Manu" 142 (1st ed., Nag Publishers, Delhi, 1980)

market and prescribed duty on sellers to prevent crimes against consumers.⁹⁹ 400- 300 B.C a director of trade was also appointed by the ruler whose primary responsibility was to monitor the market and ensure fair trade practices.¹⁰⁰ But a major difference in Arthashastra and Manusmriti was that former protected both sellers and buyers respectively whereas latter's primary concern was primary protection of the consumer and because of the same reason good practices were prevalent.

4.2 Consumer Protection in Modern Period

In the medieval period too, the consumer protection continued to be a major concern for the rulers. In Mughal period, large number of weights were used in India. The prices were fixed by looking at local conditions of the people in the provinces. There was a mechanism for price enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods.¹⁰¹

In modern period, the Britishers repealed the old traditional legal system prevalent in India and formed a unified legal system across India.¹⁰² The Indian legal system went through a big revolutionary change and the British style legal stem was used to administer justice in India. The laws regarding consumer protection which were passed during British regime were Indian Contract Act, 1872, Sales of Goods Act 1930, Indian Penal Code, 1860, Drugs and Cosmetics Act of 1940, Civil Procedure Code, 1908 and Agriculture Procedure of 1937.

- **The Indian Contract Act, 1872**

This act defines all agreements as contracts if they were made by free consent and the parties were competent to contract, for a lawful consideration and with a lawful object. The consent will be free only if it is free from coercion, undue influence, fraud, misrepresentation and mistake of law. In such cases, the contract is voidable at the option of the party whose consent was obtained.¹⁰³

Earlier the consumer interests arose from a contract between two parties, like

⁹⁹ See R.P. Kangle, The Kautiliya Arthashastra – (Part II ,University of Bombay Publisher, 2nd ed. 1972)

¹⁰⁰ Ibid

¹⁰¹ S.R.Bakshi, “Advanced History of Medieval India”287 (Vol. 1, 1st ed; Sterling Publications Private Limited 2003).

¹⁰² Marc.Galanter, “Law and Society in Modern India “ ,15 (1st ed; Oxford University Press,1997).

¹⁰³ DR. AVTAR SINGH, INTRODUCTION TO THE LAW OF TORTS (CONSUMER PROTECTION, 2(2nd edition, Eastern Book Company 2005)

buyer of car, purchase of a TV set or giving the garment for dry cleaning, delivery of goods to a carrier who does not reach the destination timely, purchase of a gas stove which is defective in nature and eventually leads to destruction in the property of the buyer.

The Indian Contract Act also dealt with aspects regarding guarantee and contractual liability. If the standard form of contracts for products like cooker or gas stove etc. stipulated terms of contracts which were unreasonable and undue advantage could be taken of the party which was weaker, then the contract could be voidable at the option of the weaker party under Section 19 of the Indian Contract Act, 1872.¹⁰⁴

In *Lily white v. Munuswami*,¹⁰⁵ the customer had given her saree for dry cleaning to the dry cleaners. They lost it and then customer claimed the compensation of Rs 220 as it was priced that much but defendant was ready to pay only 50% of the price. The court held that limiting price was unreasonable in nature and hence dry cleaners were liable to pay compensation in full.

- **Indian Penal Code, 1860**

The First Law Commission was appointed by then Government of India in 1835. Lord Macaulay prepared the draft of Indian Penal Code which came into existence in 1860.¹⁰⁶ There are many provisions for protection of consumer interests in the code like (1) Prohibition of fraudulent use of false instrument for weighing (Section 264), (2) Fraudulent use of false weight or measures (Section 265), (3) Being in possession of false weight or measure (Section 266) and (4) Making or selling false weight or measure (Section 267). The purposes of these provisions are to maintain honesty in trade and commerce for the protection of rights of consumers. There are more provisions like: (1) Prohibition of Adulteration of food or drink intended for sale (Section 272), (2) Sale of noxious food or drink (Section 273), (3) Adulteration of drugs (Section 274), (4) Sale of adulterated drugs (Section 275) and (5) Sale of drug as a different drug or

¹⁰⁴ Consumer protection Law & Procedure 2006: The Lawman & layman pg. 39.

¹⁰⁵ A. I. R. 1966 Mad.13

¹⁰⁶ B.M. Gandhi, "Indian Legal and Constitutional History", 297 (Eastern Book Company, Lucknow, 2009)

preparation (Section 276). From these provisions the concern for consumer protection is lucid in the early Indian modern era.¹⁰⁷

- **The Sales of Goods Act, 1930**

This Act aims to protect the buyers. It is based on English Sales of Goods Act, 1893. Before The Sales of Goods Act, 1930 came into existence, the law with respect to sale of goods was covered under the Indian Contracts Act, 1930. This Act had changed the concept of caveat emptor and made all the traders responsible to sell mercantile goods. This Act enables the buyer to claim for compensation in case failure of delivery on time, delivery of damaged goods, or for any loss or injury sustained. Section 14 – Section 17 of the Act deals with guarantee and warranties. The act further discusses the right of seller to sell goods, and the difference between goods sold in bulk and in sample.

- **The Agriculture Products Act, 1937**

This Act was introduced with the aim to introduce quality agricultural commodities including horticulture and livestock produce to the consumers. Under this Act, the Central Government has power to make rules for marking and representing particular grade designation, authorising interested parties to grade, stating conditions to mark packaging and prescribing punishment like confiscation in accordance with the provisions of this Act. The insignia which is still used is “AGMARK”. In 1986, the Act was amended in order to protect the interest of the consumers so as to avoid misbranding. The “AGMARK” is assigned only if the product is fit for human consumption after examining properly.¹⁰⁸

- **The Drugs and Cosmetics Act, 1940¹⁰⁹**

¹⁰⁷ K.D. Gaur, “*Textbook on the Indian Penal Code*”, 393-394 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2009)

¹⁰⁸ The Agricultural Produce (Grading and Marking) Act 1937 has been enacted to protect the interests of the consumers and to ensure that there is no misgrading of articles. The schedule to the Act, consists of about 60 articles like fruits, vegetables, eggs, oil seeds, honey and ginger for the purpose of knowing their quality. Under Section 3 of the Act, the Central Government is empowered to frame rules for fixation of grade designation. Any person, company or manufacturer quality of counterfeit grading or of selling misgraded articles or of misgrading is made liable to undergo imprisonment, fine or both.

¹⁰⁹ Retrieved from < http://medindia.net/indian_health_act > visited on 16th February 2019

This Act was enacted with the aim of regulating trade, distribution, import, and export of drugs, and cosmetics as per the required standard and prevention of misbranding. Section 18 of the Act deals with prohibitions of those drugs and cosmetics which are not of standard quality, adulterated, spurious or misbranded.

- **Capital Issues Control Act, 1947**

This Act aimed to channelize the capital resources in order to protect the innocent investors. It did not directly protect the consumer interests but indirectly aimed to cover larger public interests.

4.3 Consumer Protection in the Post-Independence Era

India had gained independence on 15th August 1947 which was a historic occasion. Constitution of India¹¹⁰ was adopted in 1950 which is the grundnorm of our country. It has prescribed Fundamental Rights which are often described as Magna Carta of the country.

Article 21 of the Constitution ensures right to life with human dignity. Article 19(1)(g) guarantees citizen of India right to practice free trade or profession in any part of India. The Directive Principles of State Policy laid down objectives to attain economic and social justice. Illustratively Article 47 imposes duty on state to ensure safeguards for its people and improvement of public health. India has always been a socialist state aims to provide decent standard of life and security to its people.¹¹¹

At the time of gaining independence, India was mostly an agricultural economy but then then government decided to industrialise through Five Year Plans.¹¹² Hence it became important for developing economy to introduce the concept of consumer protection due to economic inequality, high rate of illiteracy, shortage of essential commodity, adulteration, black-marketing, underweighting, and unawareness of consumer rights amongst the citizens of the country. The goals mentioned in the five Year Plans were to improve the standard of living, provide full employment at an adequate wages and reduce inequalities in the society on the basis of wealth. Large

¹¹⁰ B.M. Gandhi, "Indian Legal and Constitutional History", 414-415 (Eastern Book Company, Lucknow, 2009)

¹¹¹ D.J. De, *The Constitution of India*, Vol. I, Article 1-104, Asia Law House, Hyderabad, 2002, pp. 1220-1221.

¹¹² J.N. Pandey, "*The Constitutional Law of India*," 32-33 (Central Law Agency, Allahabad, 2008)

number of industries were established in India across the country due to which many people migrated from rural to urban place in order to search for employment. In the chaos of this process, certain essential commodities faced shortage in supply and the menace of adulteration was observed at increased rate which forced government to control their supplies, productions, and distributions. Hence the period of 1950's led to enactment of many legislations to protect the consumer interests from various perspectives of purchase.

The government introduced Banking Companies Act, 1949 and the Industries (Development and Regulation) Act, 1951, the Emblems and Names (Prevention and Improper Use) Act, 1950, Industries (Development and Regulation) Act, 1951, Forward Market (Regulation) Act, 1952, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Prevention of Food Adulteration Act, 1954, the Essential Commodities Act, 1955, the Companies Act, 1956, the Indian Standards Institutions (Certification of Marks) Act, 1956, the Standards of Weight and Measures Act, 1956 (1976), Trade and Merchandise Act, 1958, The Bureau of Indian Standards Act, 1986 and Monopolistic and Restrictive Trade Practices Act, 1969(Amended in 1984).

- **The Prevention of Food and Adulteration Act, 1954¹¹³**

This Act came into existence so as to avoid adulteration of goods. The officers are appointed under this Act to check the quality of the food and food establishments. Section 2 of the Food Adulteration Act, 1954 describes those foods which are adulterated in nature. The conditions which make the item adulterated are described in this section of which few are mentioned here such as article is not of as promised quality as promised to purchaser¹¹⁴, article is of inferior¹¹⁵ quality, article is injurious¹¹⁶ to health, article is kept under insanitary¹¹⁷ conditions, if the article is unfit for human consumption, article is obtained from diseased animal, etc.

¹¹³ Act no. 37 of 1954 as amended by act 22 of 1995

¹¹⁴ Section 2(d), Prevention of Food Adulteration Act, 1954

¹¹⁵ Section 2(e), Prevention of Food Adulteration Act, 1954

¹¹⁶ Section 2(f), Prevention of Food Adulteration Act, 1954

¹¹⁷ Section 2(i), Prevention of Food Adulteration Act, 1954

- **The Essential Commodities Act, 1981**

The Act dealt with persons who were involved in hoarding and black marketing and profiteering of essential commodities in order to create inflation in the essential commodities. Essential Commodities under this act are known as edible oils, pulses, petroleum products, drugs, fertilisers, etc. But there is one major drawback to this Act that it is very difficult to speculate between genuine build up stock and speculative hoarding because in India the crops are grown on seasonal basis. But at the same time the Act plays an important role to protect the common man from falling prey to traders and shopkeepers.

- **The Drugs and Magic remedies Act, 1954**

This Act was introduced to make those companies punishable who advertised their drugs claiming magical properties and stated them as cognizable offence. It is strictly against tantric, mantra which claim to have miraculous powers to influence any organ in the humans or animals.¹¹⁸

- **Indian Standards Institutions (Certification of Marks) Act, 1956**

This Act provides for the operation of certification for marketing schemes in order to ensure quality in marketable products.

- **Indian Companies Act, 1956**

It was an important landmark legislation in the Indian history. It was to regulate the functioning of corporate form of organisation in the broader public interest in India.

- **Standards of Weights and Measures Act, 1976**

This Act was established for standards of weights and measures, to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number, and to provide for matters connected therewith or incidental thereto.

¹¹⁸ Dr. Lily Srivastava., “Law & Medicine”, 258 (Universal Law Publishing, ISBN 978-81-7534-949-0.)

- **The Trade and Merchandise Marks Act, 1958**

The first statutory law which was passed related to trademark in India was the Trade Marks Act, 1940 which had similar provision like the UK Trade Marks Act, 1938. In 1958, the Trade and Merchandise Marks Act, 1958 was enacted which consolidated the provisions related to trademarks contained in other statutes like, the Indian Penal Code, Criminal Procedure Code and the Sea Customs Act.¹¹⁹ In 1999, this Act was also repealed and substituted by current legislation that is The Trademarks Act, 1999.

- **Monopolies and Restrictive Trade Practices Act, 1969**

This act provides that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected herewith or incidental thereto.

The above mentioned legislations marked the beginning of an era of active consumer protection in India. However, the consumer could not very well accommodate these new legislations as they still continued to be cheated by the manufacturers, distributors, and retailers. Then liberalisation policies were introduced which led the market to flood with many consumer products. The technological development took place and the consumers standard of life improved and they demanded varieties in essential commodities. The problem with the current legislations were that they did not save consumers from misleading advertisements, unfair trade-practices and false information.¹²⁰ There was dishonesty in consumer's dealing not only in the private sector but also against undertakings which were run by state government and corporations owned or controlled by the state. It had become the hour of the need to provide adequate protection to the consumers, for which a new law was required to protect the consumers. Finally, after movements conducted by various Consumer Groups like Consumer Education and Research Centre and citizens of the India across

¹¹⁹ Narayanan, P. (2004), "*Law of Trade Marks and Passing off*", 3 (6th ed. Kolkata: Eastern Law House, ISBN 9788171772322.)

¹²⁰ C.M.K. Thampi' "*Consumer Rights in Service Sector*", 66 (Concept Publishing Company, 2008, New Delhi,)

India and the season of Public Interest Litigation led to birth of Consumer Protection Act, 1986.

The Consumer Protection Act, 1986 aimed to provide better protection to the consumers and thus provide for the establishment of consumer councils and other authorities for the settlement of consumer disputes and matter connected herewith. The Act wanted to provide speedier justice to the victims and create a revolution in the field of consumer protection, education and guidance.

This is a legislation which contains both civil and criminal liability. One of the benevolent creation of this statute is that it leads to competition between the sellers. However, a fair competition has to be encouraged thereby avoiding false or misleading information on which decisions are based that take place in the market place. The Act has been divided into four parts which deal with rights of the consumers, liability of the accused who violate these rights and an arrangement for the enforcement of the above provisions. These parts are broadly named classified as Product Liability, Unsafe Goods, Misleading Price Indications an Unfair Competition.

The Consumer Protection Act, 1986 was amended in 1991, 1993, 2002 and 2008. This is one of the legislations which has achieved milestone in the socio and economic areas of the country. But India has seen any revolutionary and technological changes in the society which has led to production of more and more consumer goods and further the act has tried to incorporate more and more development as required with time. This is the only act which is less formal in its proceedings and more citizen friendly in terms of redressal system as it involves less paper work.¹²¹ This Act is also called as poor man's legislation because it ensures justice to all the persons irrespective of their position and status in the society.

The Consumer Protection (Amendment Act, 2002 made changes in the pecuniary jurisdictions of three tier forums and procedural mechanisms. The Consumer Protection (Amendment)Act, 2008 introduced Prepaid Purchase Cards as property but none of the amendments provided any protection to the consumers' in online shopping.¹²²

¹²¹ P.K. Majumdar, "*Law of Consumer Protection in India*", 11(Orient Publishing Company, Allahabad, 2004),

¹²² Kurian Joseph, "Consumer Protection: Significance and Effectiveness", in Zacharias Thomas (ed.), *Current Topics in Economics, Commerce and Management*, Discovery Publishing House, New Delhi, 1998, pp. 185-201 at p. 193.

4.4 Objectives of the 1986 Act

The statement of objects and reasons as per the Consumer Protection Act, 1986 are as under:

- (i) The right to be protected against the marketing of goods, which are hazardous to life and property;
- (ii) The right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices;
- (iii) The right to be assured, wherever possible, access to a variety goods at competitive prices;
- (iv) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate fora;
- (v) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- (vi) The right to consumer education.

The Consumer Protection Act, 1986 is a great social welfare legislation that aims to protect the consumers from various kinds of exploitation and unfair dealings. This Act is purely compensatory in nature rather than being punitive or preventive. This Act is much more effective in nature than any other jurisdictions across the world despite being much more advanced than India. There are large number of deficiencies and shortcomings in the Act but consumer has lot of scope to ensure accountability of producers of goods and providers of services.

In 1997, in International Conference on Consumer Protection held in Malaysia, the Indian Consumer Protection Act was described as “which has set in motion a revolution in the field of consumer rights, the parallel of which has not been seen anywhere else in the world”.¹²³

The Consumer Protection Act 1986 has given a three tier system of redressal agencies at each levels i.e. district, state and national in the country. They are often called as consume courts but according to the Act they are named as District¹²⁴ Forum whose pecuniary jurisdiction is up to Rs 20 lacs, State Commission¹²⁵ between Rs 20 lacs and

¹²³See (2008) 7 SCC III

¹²⁴ Section 11, Consumer Protection Act, 1986

¹²⁵ Section 17, Consumer Protection Act, 1986

100 lacs and National Commission¹²⁶ i.e. beyond 100 lacs. The Forums are chaired by President and two other members of which one is a woman. This shows that makers of the Act ensured gender equality in decision making of the dispute as it helps to gain broader perspective on matters. The proceedings before these forums are conducted on the principles of natural justice. Fee structure for filing complaints in Forums are very nominal in nature so that no man is denied justice due to unaccessabilty.

Further the Act also establishes the councils which are broad based in nature as to their composition. The main objective of these councils to support the government in improvisation of their policies and implementation so as to protect and promote the consumer rights efficiently. This council contains both governmental officials and other citizens and organisations who represent different interest groups. These are basically constituted on private-public partnerships so as to effectively review public policies in areas of consumer protection.

4.5 Limitations of Consumer Protection Act, 1986

The Consumer Protection Act, 1986 is a central and comprehensive piece of legislation but taking into account the current situation of economy, we need a new law so as to adopt to continuous changes in the society for next 100 years. But some of the issues¹²⁷ faced in the execution of Consumer Protection Act, 1986 are as follows: -

- Pendency of Suit – There are large number of cases which are pending for years before the consumer forums despite time limit has been mentioned in the Act. This delay leads in lowering of confidence of the consumer's confidence redressal system. The redressal system is not at all effective and speedy for normal cases where consumers are harassed for minute issues by the sellers.
- Inferior goods- Substandard quality of goods are still prevalent in the market place. But no one of the consumers reach the consumer forums for same as the procedure is not speedy enough to adjudicate small matters quickly. These factors make recourse to the law infeasible.
- Inoperative Dispute Redressal mechanism – Law is used to secure the interest of the citizen and the objective of the Act cannot be successfully achieved until proper implementing mechanism is achieved. There are many legislations under

¹²⁶ Section 21, Consumer Protection Act, 1986

¹²⁷ Editor prof Ashok Patil, "25 Years of Consumer Protection Act: Challenges and the Way Forward" (2014)

which consumers can take their recourse to but due to ineffective implementation, they do not even bother to approach consumer forums.

- Lack of Infrastructure – The problem with Indian infrastructure is that we do not have consumer forums with separate buildings, separate staff, lack adequate resources including human resources for translating programs and functions into effective actions and have follow up and lack of sufficient budgetary allocation. It has also been noticed that many district forums do not have required knowledge and skill to discharge their responsibilities.
- Lack of Consumer Awareness – The consumers do not have knowledge about their rights, and most of the consumers who suffer are from economically backward sections, and many consumers do not even know the legal resource which exists for the wrongs done to them.
- Globalisation and Technological effect in Legislation- Due to Ecommerce industry, lot of complications have emerged, for which consumer protection legislation needs to amended to meet these exigencies.

4.6 Overview of Consumer Protection Act 2019

The Consumer Protection Bill, 2019 was passed by Parliament on 6th August, 2019 to replace the Consumer Protection Act, 1986. The President gave the assent to the bill on 09.08.2019 and it shall come into force whenever the Central Government notifies about the same. The main aim of this Act is to give timely and effective administration and settlement of consumer disputes.

This Act was brought in order to protect the consumers from the loopholes of e-commerce industry and the modern methods of virtual market place i.e. e-selling, tele shopping, direct selling and multi-level marketing in addition to the tradition methods. This Act brings more protection to the consumers as compared to the Consumer Protection Act, 1986 as the definition of the ‘consumer¹²⁸’ has been expanded exhaustively because it includes e-commerce transactions in its ambit. Further the definition of Unfair Trade Practice¹²⁹ has also been widened as it includes online misleading advertisements; the practice of not issuing bill/memo for the goods and services; failing to take back defective goods or deactivate defective services and refund

¹²⁸ Section 2(7), Consumer Protection Act, 2019

¹²⁹ Section 2(47), Consumer Protection Act, 2019

the amount within the stipulated time mentioned in the bill or memo or within 30 days in the absence of such stipulation; and disclosing personal information of a consumer unless such disclosure is in accordance with law.

The 2019 Act introduced the term unfair contract¹³⁰ with the sole aim of disallowing the trader, manufacturer or seller to make any significant change in the rights of the consumer such as imposing any penalty on the consumer for a breach of the contract, which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; refusing to accept early repayment of debts on payment of applicable penalty; entitlement of a party to the contract to terminate such contract unilaterally, without reasonable cause; permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; and imposing on the consumer any unreasonable charge, obligation or condition which puts such a consumer to any disadvantage. The whole purpose to bring in this provision was to keep a check on online platforms like Amazon, Flipkart, and banking industry and further preventing them from exploiting the consumers using their dominance in the market by coercing the consumers to give consent to standard form of contracts.

Another significant introduction to the 2019 Act is establishment of Central Consumer Protection Authority¹³¹ in order to regulate, protect and enforce the interest of the consumers and matters related to unfair trade practices. The CCPA is empowered to investigate and take actions against violation of 2019 Act. The CCPA also has power to take action and impose penalty against misleading and false advertisement as well as against any endorser of such advertisement, which means the CCPA can now initiate action against the celebrities who have endorsed such misleading and false advertisement provided such celebrities failed to carry out any due diligence before participating in such advertisements. The CCPA may impose a penalty of up to Rs.10 Lakhs for first violation and up to Rs.50 Lakhs on every subsequent violation on a manufacturer or an endorser, for a false or misleading advertisement. Further the CCPA can grant the authority to initiate suo-moto proceedings against violators; pass directions to recall products or discontinue services and provide refund to consumers;

¹³⁰ Section 2(46), Consumer Protection Act, 2019

¹³¹ Section 10, Consumer Protection Act, 2019

and file class action suits on behalf of multiple consumers which makes it an effective tool to curb mass violation of consumer interest.

A significant change brought in by the 2019 Act is concept of 'Product Liability'¹³². The product manufacturer, product service provider and product seller, can be liable for product liability such as if any harm is caused to a consumer by such defective product manufactured or sold or by deficiency in services relating to the product. Therefore, the common ground taken by E-commerce websites is that they merely act as 'platforms' or 'aggregators' will now not be tenable before the court anymore. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that under the 2019 Act, manufacturers will be liable in product liability action even where they successfully prove that they were not negligent or fraudulent in making the express warranty of a product.

In terms of Consumer Redressal Forums, there have been significant changes made in the territorial and pecuniary jurisdiction of the authorities. And Alternative Dispute Resolution Mechanism is also considered to ensure speedy resolution of disputes. Conclusively, The Consumer Protection Act, 2019 shows much greater protection of consumers in the current age of digitalisation.

4.7 Salient Features of Consumer Protection Act, 2019

The highlights of this Act are that it focusses on E-Commerce and Consumers, Product Liability, Misleading Advertisement, and Institutions established under this Act.

E-Commerce- The Consumer Protection Act, 2019 has attempted to bring e-commerce and direct selling under its ambit. It has considered consumers who buy goods and services including digital over digital or electronic platform.¹³³ The Act has also defined electronic service provider a “person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites”.¹³⁴ Such definitions have a

¹³² Section 2(34), Consumer Protection Act, 2019

¹³³ Section 2(16) of the Consumer Protection Act, 2019

¹³⁴ Section 2(17) of the Consumer Protection Act, 2019

very wide scope as they have potential to consider all aspects of business over the internet and avoid any gaps in the law. Virtual market places like Myntra, OLX, Amazon and online auction sites EBay can be held liable for any unfair trade practices. This step shall avoid violation of consumer rights to information, awareness etc. If any such e- market platform is found to sell duplicate products, it shall be heavily penalised for the wrong doings of seller. A survey by a social community platform Local Circles conducted in December last year showed that 38% respondents out of 6,923 were sold counterfeit products from an ecommerce site in one year. These guidelines are open for public comment until 15 September.¹³⁵

Product Liability- The Consumer Protection Act 1986 did not define product liability at all and the same was not defined in any other statute. But “product liability” claims could be ascertained under The Consumer Protection Act, 1986 and Sales of Goods Act, 1930.

The New Act has prescribed very strict actions against manufacturers, traders, a product service provider and seller for a defective product manufactured, serviced or sold as the case may be.¹³⁶ The CPA 2019 has defined harm in relation to as damage to any property, personal injury or illness or death, mental agony or emotional distress to personal injury, illness or damage to property, or any loss of consortium or service.¹³⁷

But one of the issues with respect to definition is that adjudication authority cannot define or prescribe any particular guidelines so as to define what conduct harm as defined under the Act. The adjudicating authorities will have to be careful so as to check whether the harm was remote or foreseeable in nature and in direct nexus with the act of trader, manufacturer, seller or service provider. Another issue which arises under the definition is that it overlaps with other laws.

Example “In the cloud service sector for example, will a personal data breach or denial of access to data or unauthorized modification or deletion of data invoke the cloud service provider’s liability under the New Act or under the new proposed personal data

¹³⁵Shilpa Singh, *How Shall Consumers Benefit from New Law*, Aug 19, 2019, available at https://economictimes.indiatimes.com/wealth/spend/heres-how-consumers-will-benefit-under-the-new-consumerprotectionact/articleshow/70711304.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, (last visited on 8th April, 2020).

¹³⁶ See section 82 read together with section 83 of the Consumer Protection Act, 2019

¹³⁷ See section 2(22) , Consumer Protection Act, 2019

protection law or under the relevant provisions of the Information Technology Act, 2000? Similar analogies of faulty service can be drawn in the banking sector as well. Will the customer have a redressal mechanism under the New Act or under the relevant provisions of banking laws?”¹³⁸

The CPA 2019 has further defined product under section 2(33). The definition is very wide in scope as it has not left any chance for the seller, trader, manufacturer or service provider to escape the liability in case of any defect or wrong caused by it. Section 2(35) further defines product liability which is also exhaustive in nature but there is a gap as to how court shall decide if the harm has been really caused by the product or not and as to how shall they decide who is responsible for the product so as to hold the persons responsible. Chapter VI of the Act has been solely attributed to product liability which deals separately with liability of product seller, product service providers and product manufacturer and exceptions to the same. Further the CPA 2019, prescribes the locus standi as to filing of complaints for product liability. An action for product liability claims can be brought against a product manufacturer by multiple persons including a consumer (i.e. a purchaser or user of the manufactured goods but does not include a reseller or a person who uses such goods for commercial purposes), a registered voluntary consumer association, Central or State Government, and one or more consumer(s) where a number of consumers have the same interest.

Misleading Advertisement¹³⁹

Advertisements are very important for consumers as through the advertisements only consumers are able to understand about the products. But now days, unscrupulous businessmen are exploiting the concept of advertisement and misleading the public which has led to loss of confidence of public in other organisations also. Often, the consumers fail to detect such dishonest acts of the businessmen, which allows them to dishonestly promote their commodities in the manner that they are not supposed to not do. The market has improvised to a large extent as manufacturers and traders have gained better understanding thereby affecting the relationship between traders and

¹³⁸Ikigai Law Firm, *Consumer Protection Act, 2019*, September 9, 2019 available at <https://www.ikigailaw.com/the-consumer-protection-act-2019/>, (last visited on 8th April, 2020)

¹³⁹ RK Nayak, “Consumer protection law in India: an eco-legal treatise on consumer justice” (1st ed; Bombay NM Tripathi, 1991)

consumers making the principle of consume sovereignty¹⁴⁰ almost inapplicable. Now days, advertisements of goods and services are found in television, newspapers and magazines which influence the consumers demand largely despite imperfections in the quality or purity in goods or deficiency in services may be found. In addition, there are lot of choices in different brands found in same items and consumers do not have much time to choose best before they can buy.

Many milk companies like Horlicks, Complan, Bourn Vita claim that their products enhance the performance of the children in sports. But this assertion does not have any scientific backing and it has been found that skimmed milk increases the chances of prostate cancer in children. Many experts have stated that such facts should be written behind the milk packages so as to protect various consumers from health risks.¹⁴¹

Many advertisements use celebrities endorse their products. Such actions, lead consumers to believe that those goods are of superior quality and are perfect for usage in all the aspects, overlooking the defects in product if any. Educated citizens understand the complex marketing behind all this but children and uneducated citizens do not understand the same and end up believing blindly. They take things at face value and this misleads them into purchasing the items as they are.

We all know that fast foods like pizza, burger, pasta are very harmful for health and lead to obesity if consumed on daily basis but advertisements show contrary to this fact i.e. they have suitable portion of carbohydrates, vitamins and minerals necessary for the body. Consumers need to be aware about the dangers in health of such misleading advertisements, else later they might end up suffering from serious ill health diseases like cancer.

Section 2(1)(r) of the Consumer Protection Act, 1986 deals with unfair trade practices and Section 14 deal provide guidelines to court so as to use to deal with such practices. The Consumer forums in India have attempted to use this provision by giving excellent orders but they have not been successful in dealing with misleading advertisements. One of the major drawbacks of the 1986 Act is that consumers do not have power nor the infrastructure to investigate into the cases of misleading advertisements suo moto.

¹⁴⁰ [s://en.wikipedia.org/wiki/Consumer_sovereignty](https://en.wikipedia.org/wiki/Consumer_sovereignty)

Consumer sovereignty is an economic concept with two different meanings. Consumer sovereignty in production refers to the controlling power of consumers, versus the holders

¹⁴¹ Ashok Patil, *Inaugral Speech of Hon 'ble Justice Ashok Bhan, President NCDRC,*

The consumer courts can only adjudicate those matters which are taken up before them. They do not have any powers of civil court to take up the cases on their own. However, consumer courts can use their powers to issue interim orders stopping such advertisements pending disposal of the cases. The consumer forum can further provide award and compensation for any loss on account of such misleading advertisements. In *Mr Ramesh v. M/S Prakash Moped House and Others*¹⁴², the National Commission had warned the advertisers to hide crucial information using fine print thereby misleading the consumers. The NCDRC refused to take such acts lightly and not violate consumers right to information. They further said “its advised to manufacturers and service providers that advertisements should not mislead and a clear picture must be given about quality of the goods sold.”

In *Bhupesh Khurana v. Vishwa Buddha Parishad*¹⁴³ twelve students joined the BDS course in Buddhist Mission Dental College which was run by Vishwa Buddha Parishad. The students filed a class action suit against the college stating that in its advertisements, it was stated that the course was affiliated to Magadh University, Bodh Gaya and recognised by Dental Council of India. However, after spending reasonable amount of time in the college, students realised that final examinations were not conducted as it was not affiliated to Magadh University and the course was not recognised by Dental Council of India. This resulted in loss of valuable academic years of the students and the money spent on hostel etc. The National Commission, directed the college to refund the fees along with twelve percent interest calculated from the date of receipt of the amount till the date of payment.

Hence, any advertisers must take into consideration the consumer’s physical, emotional and psychological responses on the well accepted socio-economic values, traditions and standard on which it is to be judged.¹⁴⁴

The Consumer Protection Act, 2019 defines misleading advertisement with respect to product and service.¹⁴⁵ It holds seller, manufacturer, or service provider liable for giving false guarantee to the consumers for their products, falsely describing product or services and conveying any express or implied representation which shall lead to

¹⁴² RP NO 831 of 2001

¹⁴³ 2000 CTJ 821 (NC)

¹⁴⁴ AIR Manual 192 at 193 (4th ed. 1979)

¹⁴⁵ Section 2(28), Consumer Protection Act, 2019

unfair trade and practice. Further the Central Consumer Protection Authority which shall be established under the new Act shall regulate matters relating to violation of consumer rights, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of the consumers.¹⁴⁶ Section 16 of the Consumer protection Act 2019 gives power to District Collector into matters relating to misleading advertisements which shows that misleading advertisements are taken very seriously under the new law. It is the duty of the Central Authority to avoid publication of misleading or false advertisement.¹⁴⁷ The Central Authority after sufficient investigation can penalise endorser with fine up to Rs 10 lakh and also prohibit him from publishing misleading or false advertisement.¹⁴⁸ Any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.¹⁴⁹

Institutional Mechanisms

The New Act has authorised the establishment of a new authority named as Central Consumer Protection Authority.¹⁵⁰ The function of this authority is to protect the rights of consumer from unfair trade practices, and misleading advertisements. The main reasons for establishing the authority is to fill the gap in the existing regulatory system.¹⁵¹ The authority shall have an investigative wing which shall investigate into the matters relating to consumer rights, unfair trade practices and misleading advertisements.¹⁵² The provisions of CPA 2019 mandate CCPA to carry out the following functions:¹⁵³

1. inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum;

¹⁴⁶ Section 10, Consumer Protection Act, 2019

¹⁴⁷ Section 18, Consumer Protection Act, 2019

¹⁴⁸ Section 21(4), Consumer Protection Act, 2019

¹⁴⁹ Section 89, Consumer Protection Act, 2019

¹⁵⁰ Section 10, Consumer Protection Act, 2019

¹⁵¹ Statement of Objects and Reasons of the Consumer Protection Bill, 2019.

¹⁵² Section 15, Consumer Protection Act, 2019

¹⁵³ Section 18, Consumer Protection Act, 2019

2. passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, and discontinuation of the unfair trade practices, as defined under the relevant provisions of CPA 2019;
3. issuance of directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement, or modify it;
4. imposition of penalties, and;
5. issuance of safety notices to consumers against unsafe goods and services and guidelines to prevent unfair trade practices
6. spread and promote awareness and research on consumer rights and
7. recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights

4.8 Provision for Alternate Dispute Resolution

The mediation movement has become an essential part of our judicial structure. The judicial system in India adopted the process of mediation through court annexed and court referred mediations. These days' large business organisations consumer associations, profit bodies, and government agencies are resorting to mediation process if any conflict arises.

Alternative Dispute Resolution is a term which denotes different methods of resolving the disputes with the help of third parties. It primarily involves arbitration, mediation, or conciliation. This was statutorily recognised in Civil Procedure Code under Section 89 and eventually Arbitration and Conciliation Act, 1996 made elaborate provisions on these three methods for disputes arising out of legal relationship whether contractual or not. The Supreme Court in *M/S Afcons Infra Ltd. v. M/s Cherian Varkey Construction Company Ltd and Others*¹⁵⁴ for the first time mentioned that all consumer disputes including disputes where a trader, supplier, manufacturer and service provider wished to maintain their business reputation and credibility should be referred to ADR. Due to the same reason, mediation as an alternative was introduced in Consumer Protection Amendment Bill(2014) to resolve disputes either during the matter pending before the Consumer Forum or prior to the matter is refused to consumer forum.¹⁵⁵ The non-

¹⁵⁴ 2010 (8) SCC 24

¹⁵⁵ Consumer Protection (Amendment) Bill, 2014 Chapter V

adversarial approach adopted by mediation makes it different from a litigation which involves a detrimental process of dispute resolution. Mediation is advantageous in preserving the business relationships, moreover in business to consumer relationship. Moreover, the trader is always in a dominant position and the buyer is in weaker position. So, whenever a consumer dispute arises, consumer is interested to exercise his consumer right in an economic manner and maintain his goodwill and reputation. In such cases, the mediation is helpful to both the parties in sustaining their relationships.

Consumer Protection Act 2019 has introduced mediation¹⁵⁶ as way of redressal mechanism to consumer grievance and District Commission¹⁵⁷ on admission of case itself refer the matter to mediation if a viable option and shall place the matter before itself only if mediation fails. Further, Chapter V of the Act deals with mediation solely where under Section 74 of the Act, a consumer mediation cell shall be established and will be attached to District Commission and State Commission of that State. The Act has also explained about the procedure¹⁵⁸ for mediation, after which settlement report shall be prepared and forwarded to the Commission.

Hence, the mediation is a recent phenomenon which needs to gain momentum in day to day life of consumers in our country. The traditional methods of litigation are time consuming and costly especially when the consumer has to reach out to the business which is located at far off distance. But one of the challenges with respect to mediation that can arise is as to where shall the jurisdiction lie. The parties will have to enter into an agreement for deciding the jurisdiction which are generally standard form of contracts prepared by the business organisation as they are in stronger position. Since, the Act has provided provisions for mediation, speedier resolution of disputes should take place and pressure on the consumer forums should be reduced to some extent.

4.9 Conclusion

Consumer Protection Act, 1986 was introduced in India to protect the consumers from exploitation from traders, manufacturers and sellers. The Act wanted to provide speedier justice to the victims and create a revolution in the field of consumer protection, education and guidance. But the problem of consumer protection in the

¹⁵⁶ Section 37, Consumer Protection Act, 2019

¹⁵⁷ Section 38, Consumer Protection Act, 2019

¹⁵⁸ Section 79, Consumer Protection Act, 2019

framework of e-commerce had gained a huge amount of consideration both from academicians and policy-makers. The governments as well as inter-governmental organizations have come up with various frameworks to deal with e-commerce sellers and e-consumers and a review of existing legal framework shows that it has failed to address e-consumer needs. It has not been able to protect the consumers from infringement of their rights. The Consumer Protection Act, 1986 specifically excludes from its ambit the rendering of any service that is free of charge. If an online platform is not charging the users, the CPA may not apply. Thus India introduced Consumer Protection Act, 2019 so that the electronic consumers' right can be protected properly. The new Act proposes a slew of measures and tightens the existing rules to further safeguard consumer rights. Introduction of a central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service providers are some of the key highlights. The scholar has attempted to analyse and explain so as to how these key features will be helpful in protecting the consumers against exploitation and malpractices.

Most importantly the redressal mechanism institutions did not have appropriate jurisdictions in the 1986 Act to resolve the e-commerce related disputes but the 2019 Act has considered the defects of the old statute and widened the scope and power of authorities established under the Act.

CHAPTER V

JUDICIAL APPROACH ON CONSUMER RIGHTS

5.1 Introduction

Each and every civilised society has a soul i.e. rule of law. Law is a command or an order and can be better described as the language of the state. The relationship between state and law is same as language to the society. So a common way of life in a civilised society is law. The rule of law has developed to a large extent and is used for maintaining order, to protect individual interests of the individuals in the society and the public at large to fulfil the ideals of the modern welfare state. The interpretation of the law is the function of judiciary in a democracy like ours and the main concern of law and justice is protection of rights for the well-being of the people. In a society, a consumer is generally target of unfair trade practices by the well-organised sector of the traders and businessman and the illiterate and financially weak consumers have to fight against the powerful lobby of businessman and then judicial activism comes into role to protect the interests of the consumers.

The Cantonment Board is duty to bound in making proper arrangements, for lighting the roads. The duty to take care may flow from common law. Negligence is nothing but the breach of duty take care. The basic duty of precaution is always implied where a danger has been created by a person or authority irrespective of the fact whether the legislature has authority irrespective of the fact whether the legislature has authorised or not the creation of such danger. The appellant with his colleagues was going to see the Taj in the car owned by him. He was driving the car with his usual care and at a very moderate speed of about 15 miles per hour. The car suddenly collided with a traffic island at the crossing of the Mall and Metcalf Road (now known as General Cariappa Road). The said traffic island was wrongly and negligently built by the defendant Board at a very inconvenient spot in or about the middle of the Mall Road. There were no overhead lights on the traffic island nor any other light near it. It was not equipped with ruby lights so as to make it noticeable for vehicles using the road at night The Cantonment Board was charged with the duties of lighting the streets and other public places, maintaining streets and roads and removing for purposes of public safety

undesirable obstructions in streets and roads and keeping them safe for vehicular traffic. As a result of the collision the occupants of the car including the three plaintiffs, suffered injuries which gave severe physical pain and great mental shock to them. There was a permanent impairment of certain organs of the body which had affected their earning capacities for life and resulted in loss of income due to inability to do professional work. Dr. C.B. Singh and Dr. V.R. Singh claimed Rs. 30,000/- each as damages and compensation as a result of this gross negligence, misfeasance and malfeasance.¹⁵⁹ The court provided appellant with the compensation as demanded and further the court held that if there is a legal obligation to do something, omission to do so is negligence provided the accident can be attributed to it. The public has a right to use the roads for all reasonable purposes and if it is established on the facts of the case that the Board or the local authority has not sufficiently discharged, its obligation to keep the road reasonably free from danger, negligence on its part cannot be doubted.

Where a local authority erected a barrier across a highway near a crater made by a bomb and hurricane lamps were placed upon the barrier, but the lights were extinguished by a strong wind, while the man whose duty it was to attend to the lamps failed to visit them on the night in question and the respondent, who was riding a bicycle along the street, received injuries by colliding with the barrier and the local authority contended that the barrier was erected without negligence and they had not been negligent in leaving it unlighted; it was held that the appellants having placed the obstruction in the highway were under a duty to keep them lighted and as such was evidence of negligence for which they were in law responsible and the injured was entitled to recover damages in respect of the injuries received.¹⁶⁰

Judiciary in the arena of consumer protection has been trying to perform a proactive role but consumer forums have largely contributed to the same. But due to inordinate delay and large number of pending cases, consumers have not been very active in participation in litigation process. They fear of paying heavy fees to the counsel to represent their cases though one can appear for himself in the forums.

The Supreme Court in 1994 in Lucknow development Authority¹⁶¹ case had given the widest possible interpretation to term “service” but same was again constrained in its

¹⁵⁹ C.B Singh(Dr) v. Cantonment Board, Agra, AIR 1974 All 147(153-155).

¹⁶⁰ Foster v. Gillingham Corporation, (1942) 1 All ER 304.

¹⁶¹ Lucknow Development Authority v M.K Gupta AIR 1994, SC 787

scope in *SP Goel v Collector of Stamps*¹⁶², where court refused to consider the duty of Controller of Stamp under the Stamp Act, 1899 as “service” despite the officials committing gross negligence which resulted in large loss to consumers. This led to controversy that courts were changing their interpretations of concepts of consumer law when it had to decide between sovereign and non – sovereign functions. *Poonam Verma v. Ashwani Patel and Ors*¹⁶³ where Supreme Court analysed the rights and liabilities of the medical practitioners and held that only those people are eligible to practice who have knowledge and skill to do the same and not mere pretenders as no human has right to exploit the consumer due to illiteracy or poverty.

Consumer forums have been very clear in terms of their jurisdiction due to limitation, i.e. the National Commission holds that it cannot look into the fairness of the terms of the contract. But the Supreme Court in *Bharti Knitting Co. v. DHC Worldwide Express Courier Division of Airfreight Ltd*¹⁶⁴ had given decision in the favour of literal interpretation of the contract which was unreasonable. Since the court has already so many pending cases with respect to constitutional matters, criminal matters and many more, they should refer some guidelines to the consumer forums where they can look into the legality of the contract on the basis of fairness.

*Fair Engineering Pvt. Ltd. & Ant. V. N.K. Modi*¹⁶⁵ was the case where Supreme Court looked deeply into the provisions of Consumer Protection Act, 1986 so as to decide the powers and jurisdiction of National, State and District Consumer Forum where court held that all the forums have powers of civil court and judicial authority. They also held that proceedings before the authorities are legal in nature. The court invoked section 3 of the Consumer Protection Act 1986 and stated that forums can continue to adjudicate the matters like arbitration proceedings and held that they are at liberty to decide their way but on the basis of principles of natural justice and rule of law. The Supreme Court further gave an enlightening opinion in another case where it held that consumer forum like any other court has right to exercise ancillary and incidental powers in the aid of substantive power to decide controversies¹⁶⁶. But despite such broad interpretations consumer forums have been found using conservative approach.

¹⁶² I (1996) CPJ (SC)

¹⁶³ II (1996) CPJ 1 (SC)

¹⁶⁴ II (1996) CPJ 25 (SC)

¹⁶⁵ AIR 1997 SC 533

¹⁶⁶ *Gujarat Maritime Board v. Hahu Daud Haji Harun*, III (1996) CPJ 20 (SC)

In *Mysore Sales International Ltd v. M.N. Misra*¹⁶⁷ the National Commission had refused to intervene in the matter as it didn't constitute service. In this case, the complainant had paid Rs 11 lakhs to the opposite party as security for the dealership but the amount was returned to him after 83 days and interest was not paid further. The Commission held that the relationship between complainant and opposite party was merely a contractual relationship and therefore complainant was not a consumer. The Forum further criticised the decision of District and State forum on the basis of irregularities. It was eventually a bad decision which was criticised by the Supreme Court in *Punjab water Supply & Sewage Board v. Udaipur Cement Works*¹⁶⁸ stating that they do not approve this observation of Commission without assessing if there was any deficiency of the service found. The court has held that beneficiaries under contract of guarantee and buyer of seeds for agricultural purposes are consumer under the consumer law. But one of the important questions answered by the National Consumer Forum in a case where wife had suffered the injuries due to bursting of pressure cooker and husband had petitioned for the same. The consumer forum held in affirmative and awarded compensation of Rs 38000/- as he was also the consumer under the law though his wife had suffered.

One of the important questions faced by consumer forum was that if the members of consumer forum pass an order without the junction of president, was valid? The National Commission in *Prem Kishore Aggarwal v Estate Officer*¹⁶⁹, concluded that State Commission had wrongly proceeded as president had given a dissenting judgement separately, and he was also part of the proceedings. Hence, it meant that an order cannot be concluded to be final and valid if the president was not part of the proceedings. In *United Insurance company Ltd v. Sanjeev Kumar*¹⁷⁰ suo moto notice was taken by the National commission on the orders of State Commission who passed the orders without the junction of the President because the position was vacant at that time. The National commission set aside the court on the basis of illegality and without jurisdiction. The Supreme Court on the same issue later held that National Commission committed an error in holding that if member of the forums decides a case without president due to his absence or vacant post or any other reason. It is the duty of the forum to consider a

¹⁶⁷ II (1996) CPJ 64 (NC)

¹⁶⁸ I (1999) CPJ 67 (NC)

¹⁶⁹ III (1996) CPJ 181 (NC)

¹⁷⁰ I (1996) CPJ 90 (NC)

complaint on merits if written statement has been filed by the consumer and his lawyer doesn't attend the case.¹⁷¹

5.2 Jurisdictional issue

The jurisdiction of forums has always been under confusion and unclear hence with the help of certain case laws, one needs to understand that the forums have approached this issue. But under the Consumer Protection Act, 1986 the jurisdiction is either territorial or pecuniary. Territorial jurisdiction means that complaint can be filed at the place where either of the parties reside or voluntarily carry out business or has a branch office or work for personal gains.¹⁷² Pecuniary jurisdiction depends upon the amount of relief which is claimed by the party and not by the subject matter of the suit. The jurisdiction is only decided by the claim made by the complainant and not the amount of relief granted to him.¹⁷³

In *Sheila Construction Pvt. Ltd v National Lake Development Authority*¹⁷⁴ the authority land was sold to two parties at Rs 51 lacs and Rs 45 lacs. The authority had promised for construction of a connecting road. On failure to perform their promise, the National Commission asked the authority to complete the road within a period of 6 months, and directed complainants to pay Rs 3 lacs. But after assuming the jurisdiction, the Commission suddenly dismissed the complaint stating that no hiring of service involved though there was an outright sale of immovable property. In *Quality Foils India Ltd v Bank of Madurai*¹⁷⁵ the complainant had challenged the excess interest charged by bank but the National Commission refused to take the matter into its hand due to insufficient jurisdiction to handle such matters. In *Ghai Agro Mills Ltd. v New India Insurance Co.*¹⁷⁶ the insurer had accused the insured of fraud which was not accepted by National Commission before itself. In this case, some miscreants, had lost oil tanks of insured resulting in loss of oil. The surveyor directed to pay Rs 54,09,356/- which was accepted by the party. But the same claim was repudiated by the investigator after 5 years. In *Perumal v. Velwyn Television Ltd*¹⁷⁷ the owner of the TV set had suffered from electric shock and as a result died, but the National Commission set aside

¹⁷¹ *Life Insurance Corporation v Sujata Mahabal Puniya*, I (1996) CPJ 222(NC)

¹⁷² Section 11 and 12 of the Consumer Protection Act, 1986

¹⁷³ *Farook Haji Ismail v. Gavabhai Bhesania*, (1991) 2 CPJ 452 Guj

¹⁷⁴ III (1996) CPJ 11(NC)

¹⁷⁵ II (1996) CPJ 103(NC)

¹⁷⁶ III (1996) CPJ 47 (NC)

¹⁷⁷ I (1996) CPJ 164 (NC)

the orders of State Commission stating that it was a complex issue and could not be decided by consumer forums but civil court. Later, the investigator found that death was due to defect in TV set.

It cannot be denied that there is a very thin line between complex and non- complex issues and can only be decided on case to case basis but since consumer courts do not have any time limitation for disposal of complaints, the underlying justification of individual distinction no longer exists. Hence, consumer forums should determine complex cases. In *Bharathi Knitting Company v. Dhl Worldwide Express Courier ...* on 9 May, 1996 the Supreme Court had held that “in an appropriate case the tribunal without entrenching upon the disputed questions of fact may decide the validity of terms of contract.”. This clearly specifies that National Commission should identify appropriate situations and use their power for given purpose.

5.3 Procedural Issue

The consumer forums generally borrow the technicalities of the Civil Procedure Court, 1908 and use the terms like negligence, deficiency in service, etc. The appellant or his agent in an appeal should present their complaint by memorandum in which they shall mention their grounds of appeal with distinctive head, arguments with distinctive head and such shall be numbered consecutively. The appellant has to submit 6 copies of the memorandum to the commission for an official purpose. On the date of hearing, it is compulsory for the parties or their agents to be present in the court and if they fail to do, the National Commission has a discretion to dismiss the suit or give order ex parte.¹⁷⁸ The detailed procedure are prescribed by the Act differently for each of the forums which are to be adopted by the respective commissions in dealing with the complaints of the consumers.¹⁷⁹

In *Harbans Singh v Rajasthan Housing Board*¹⁸⁰ The National commission held that first appeal and complaint are in continuation with each other and all reliefs available on the date of the appeal should be granted to the appellant. In one of the cases¹⁸¹, the

¹⁷⁸ Section 15, Consumer Protection Act, 1986

¹⁷⁹ See, Section 13, Consumer Protection Act 1986; Section 18 Consumer Protection Act, 1986, Section 22, Consumer Protection Act, 1986

¹⁸⁰ II (1996) CPJ 122 (NC)

¹⁸¹ *Hindustan Liver Ltd v. Namdeo Barrirat Deo, I* (1996) CPJ 46(NC)

National Commission had remanded the matter to State Commission as it had refused appellant to cross examine the witness which resulted in failure of natural justice.

5.4 Defect in Goods

A complaint can be made when the goods in question suffer from one or more defects. Section 2(1) of the Consumer Protection Act, 1986 defines defect as any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard of the good in question as it is required by law to be maintained in a certain manner.¹⁸² The issue of defining a product has been into continuation since long time. Judiciary has been inspired by public policy considerations for the protection of product users and hence try to approach the issue in question in a broader way.

The goods which are unreasonably dangerous are known as defective goods because they are likely to jeopardise the safety of a reasonable user. In such cases, the danger can be due to defective design. And goods are also defective if they do not fulfil any legal requirements or are not in accordance with the claims made by the trader in reference to them. The legal requirements are in the care of the whole manner of legislation affecting trading or marketing of goods. The words “required by law” do not only meet legal requirement but also those under common law like tort law. This law states that all consumers should be given only safe products and it is the responsibility of the producer to ensure that. In some cases, the liability is absolute in the sense that liability would follow whether the manufacture was at fault or not and in others liability depends upon the negligence.¹⁸³

In *S.L.N Auto Service Station v. Herald Alfred Lewis*¹⁸⁴ the motor cycle was damaged and broke down during the guarantee period itself. The complainant stated that damage would not have occurred if there was no manufacturing defect was rejected. The consumer court directed the dealer to compensate the complainant for the loss, expenses and mental agony suffered and further stated that manufacturing defect has to be proved and then only it will be taken into consideration.

¹⁸² *Coop Sangha Ltd v. State of Karnataka* (1994) 1 CPJ 80 NC

¹⁸³ See P.S Atchuthan Pillai, *The Law of Torts*, 265 (9th Edn, 2004)

¹⁸⁴ 1993 CCJ 38 Kant

In the landmark case of *Greenman v Yuba Power Products Inc*¹⁸⁵, William Greenman brought a suit for damages against Yuba Power Products as well as the retailer, for injuries sustained while using a wood lathe. His wife had bought the shop smith and given it to him as a Christmas present, and two years later, he had brought the necessary attachments to use the shop smith as a lathe for turning a large piece of wood the piece of wood several times without incident, until on one occasion, the piece of wood suddenly flew out of the shop smith, striking him on the forehead and causing him serious injuries. The trial court ruled in favour of the retailer, but held Yuba Power Products liable as manufacturer based on negligence, the courts are empowered to impose liability in appropriate cases, in spite of the fact that there is proof that the manufacturer had taken all reasonable care in the design, preparation and sale of the product in issue. The product must however have left the control of the manufacturer; it must have been put into stream of commerce by the manufacturer as a condition precedent to liability.

In *Rajeev Metal Works v. Metal Corporation of India*¹⁸⁶ the complainant had placed an order of metal sheets from the Corporation, from foreign source but the opposite party failed to deliver the required quality of complainant and hence complainant sued for deficiency in service. The National Commission held that sale involved commercial purpose and not any rendering of service. The Supreme Court held that respondent was a statutory authority which was supposed to be responsible only for procurement of required goods on behalf of buyers from foreign suppliers and further the goods were bought for commercial purpose and hence under Section 2(1)(d)(ii) appellants are not the consumers. But National Commission had deferred from its view in *Kodi Electricals v. C.P. Gupta* where the ultra sound scanner was found to be defective by the respondent which was used in his nursing home. The State Commission held that it is not about the profits of an enterprise but the usage of goods by the complainant. And it is not for commercial purpose under Section 2(1)(d)(i). The National Commission in the appeal reiterated the decision of State Commission.

Once a complainant had purchased a brick making machine which was found to defective, the National Commission in the same case stated that when any person purchases anything to earn a livelihood using that product, he is a consumer in such

¹⁸⁵ 59 Cal 2d 57(1963)

¹⁸⁶ I (1996) CPJ 20(SC)

case.¹⁸⁷ In one of the recent cases, National Commission opined an interesting viewpoint in relation to defect in goods. In *Rajesh Anand v. Samsung India Electronics Pvt. Ltd. and Anr*¹⁸⁸ the complainant had bought Samsung Air Conditioner, 2 tons which created lot of issues and many complaints were registered for the same on their toll-free number. The petitioner then complained to the respondent (seller) but he also solves the petitioner's problem and rectify the defect and dint not even replace the AC. Despite the AC being in a warranty condition, seller charged him for repairs which is against the condition of warranty extended on AC. The petitioner then approached the District Commission and State Commission but they held that there is no defect and could not provide relief to the petitioner. Finally, on an appeal to National Commission, it stated that State Commission and District Forum had irregularly decided the dispute as they had completely ignored the written complaints of the complainant and further stated that for proving the manufacturing defect, the expert's opinion is necessary.

5.5 Deficiency in Service

A complaint can be filed under Section 12 of the Act in respect of unsatisfactory services. The consumer has to prove that service was deficient in nature and the term has been defined by Section 2 of the Act and the term deficiency is also defined under Section 2(1)(g) of the Act. The definition of both service and deficiency is very wide and inclusive in nature which shows that legislature has an intention to protect consumer against the services rendered by statutory bodies. "The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by its service or even facility.¹⁸⁹" The Supreme Court further stated that deficiency in service cannot be alleged simply but some faulty, imperfection or shortcoming has to be shown in quality, quantity, or nature of performance which is required to be performed by a person. The burden of proof lies on a person who alleges it. And deficiency can only be used in those cases, where service is rendered, otherwise no question of deficiency comes into play.

¹⁸⁷ II (1996) CPJ 88 at 9 (NC)

¹⁸⁸ Revision Petition No. 249/2018 (Against the Order dated 14/12/ 2017 in Appeal No. 3705/2015 of the State Commission Jammu and Kashmir); 2018 Indlaw NCDRC 868.

¹⁸⁹ Lucknow Development Authority v M.K Gupta AIR 1994, SC 787

There have been many cases with respect to deficiency in service so as to what constitutes “deficiency in service”. The Lucknow Development Authority Case¹⁹⁰ court explained the meaning of the term properly. It made following observation “The authority empowered to function under a statute while exercising power discharges public duty. It has to act to sub serve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary.”¹⁹¹ However, the same progressive attitude has not been consistent in the decision of National Commission. In *S.P Goel v. Income Tax Authority*¹⁹², the collector kept on collecting the stamp fee as tax negligently for 5 to 6 years, and stamp duties are in nature of the fee and the National Commission contemptly ignored the callous attitude of the collector.

But it then reconsidered its decision in *Central Bank of India v. Dil Bahadur Singh*¹⁹³ the National Commission held that in order to claim the arrears of Provident Fund, the complainant had to move to civil court for the same.

In another case, the *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*¹⁹⁴, the commission had made some distinctions to establish accountability of payments of provident fund. The distinction was between provident fund made by Account General and Provident Fund Commissioner under the Employees Provident Fund & Misc. Provisions Act, 1952. The Account General was held liable for payment of general provident fund by State Commission. This decision was set aside by National Commission stating that Account General was performing a statutory function and he had immunity for the same and hence he was not doing a service but Regional Provident Fund Commissioner was performing a service under Section 2(1)(o) of the Act. In the case of Account General, the court said that he maintained a General Provident Fund Account which is a statutory authority and source of the authority is not 1952 Act.

¹⁹⁰ Lucknow Development Authority v M.K Gupta AIR 1994, SC 787

¹⁹¹ Para 11

¹⁹² 1996 1 SCC 573

¹⁹³ III (1996) CPJ 379 (NC)

¹⁹⁴ Civil Appeal No. 411 of 1997

Hence, he was not rendering a service under the Consumer Protection Act, 1986. But this view was criticised by many lawyers on the basis that sovereign functions often avoid their liabilities due to the immunities and privileges.

In 1996, the Common Cause Society¹⁹⁵ had filed a complaint against airlines for its liability in operation as for the period of six weeks, on account of illegal strike by Indian Flight Engineers Association and not by Indian Airlines. But airlines had not committed any negligence and hence it could not be asked to pay for it. The National Commission took a very stern view against the Association and warned them. They also viewed that in such complex situations, the principals and agents are responsible for the acts, because due to complex business procedures, consumers largely rely on agents. In another case of Air Deficiency Service, *Air India v. H Parekh*¹⁹⁶ the agent was compelled to return tickets in violation of rule of principal that the trip must be at least 10 days' duration to qualify for the concession. But in the prior case, the National Commission had taken strong stand of not holding Air India Possible responsible as mistake was committed by the agent. This decision was not publicised much as it would have led to loss of business of agents because many consumers would have avoided to deal with them in future. In *Station Manager, Indian Airlines v. Jiteshwar Ahir*¹⁹⁷ the passenger didn't identify his luggage on the ground. When the passenger was about to board the staircase, it was removed which resulted in injuries to him. The State Commission awarded him compensation of Rs 5,01,000/- for deficiency in service and negligence. The National Commission approved the same decision of State Commission. But in *K Ravindran v. Singapore Airlines Ltd*¹⁹⁸ the complainant had reported at the counter of airlines only 50 minutes before the scheduled departure. Indian Airlines refused to deliver the boarding pass as gates had already been closed and National Commission favoured the decision of Indian Airlines stating that no deficiency of service was committed. In *Indian Airlines, New Delhi v Sn Sinha*¹⁹⁹ a metallic wire was found in the food provided on board in the airplane. The National Commission directed airlines to compensate the complainant of Rs 2000 on account of deficiency of service. National Commission has taken keen interest in airline services

¹⁹⁵ Common Cause Society v. Union of India I (1996) CPJ 33 (NC)

¹⁹⁶ II (1996) CPJ 1116(NC)

¹⁹⁷ I (1996) CPJ 326 (NC)

¹⁹⁸ II (1992) CPJ 536(NC)

¹⁹⁹ I (1992) CPJ 62 (NC)

matters but in case of banking matters, it is still hesitant to decide the matters as it involves complex accounting work which civil courts can take cognizance of.

In *R. Sethu Raman v. The Manager, Indian Overseas Bank*²⁰⁰, the bank had dishonoured the draft negligently. State Commission held the bank liable of deficiency of service. The complainant had submitted an application for allotment of shares which was not entertained by the bank and it lead to loss for him due to spurt in prices of shares. In *Mike P Ltd. v. State of Bank, Bikaner*²⁰¹ the bank had frozen credit facilities of the complainant without giving any notice to him. The Bank was held guilty of deficiency of service and negligent in performing its act. A bank is supposed to examine the circumstances and facts properly so as to decide to whom to whom to give advances of public funds in good faith. Hence it has to exercise this discretion in good faith.²⁰²

Electricity matters are also covered under Consumer Protection Act 1986 and many consumers face problems like shortage of power frequently, sudden power cut, frequent fluctuations, electricity theft etc. Courts have not been able to give appropriate relief in such situations but consumer have formed consumer groups and organisations to fight the same. However, National Commission have tried provide adequate solution to the consumers in matters where arbitrary exercise of officials of electricity department has been observed and discriminatory treatment in connections. In *Haryana State Electricity Department v. Tanuj Rashi Poultry Farm*²⁰³ the electricity was cut in the poultry farm of the consumer which resulted in death of 3080 birds. The reason for the same was that he had denied bribe to the officials of state electricity department. The meter also had been burnt but state officials did not replace it. The State Commission awarded Rs 75000/- to the consumer as compensation. On an appeal to the National Commission by the state electricity department, the commission directed the department to hold inquiry amongst its official and advised not to waste money in litigation and finally affirmed the State Commission. Another case of *Haryana State Electricity Board v. Naresh Kumar*²⁰⁴ the electricity department had drastically cut the power supply at complainant's house without any warning or notice and the same action

²⁰⁰ II (1996) CPJ 58 (NC)

²⁰¹ 1995(3) CPR I (NC)

²⁰² *Ambika Cold Storage (P) Ltd. v. State Bank of India* 1992(2) CPR 719(NC)

²⁰³ II (1996) CPJ 15 (NC)

²⁰⁴ I (1996) CPJ 306 (NC)

led to deficiency in service. The State Commission also directed to restore electricity and pay compensation of Rs 50,000. The National Commission had approved the decision of State Commission as it was found on the principles of natural justice.

Housing Matters have been largely covered by the consumer forums and consumers also have got relief in them. If an accommodation is provided in a shopping cum office complex, it is rendered to be as a service within the meaning of the Act. So, if the building authority cancels the project or inordinate delay is caused in handing over the property to the consumer, building authority shall be liable for deficiency in service. But the National Commission has cleared that it does not have jurisdiction in interfering with the prices of the property. In *Gujarat Housing Board v. Datania Amritlal*²⁰⁵ the National Commission had refused to interfere with fixation of price as it was outside its jurisdiction but it had failed to observe the inordinate delay which was caused to the consumers and they had to pay higher price in consequence of that. But the Supreme Court in *Om Prakash v. Assistant Engineer, Haryana Agro*²⁰⁶ had stated that if construction companies fail to give possession of houses as per the contract, it will lead to deficiency in service. The Supreme Court has made it clear that with respect to price of the estate, it shall not interfere, but if there is unreasonable delay in the handing over the possession, consumer can seek compensation.

In *Akhilesh Verma v. Skippers Builders Pvt.*²⁰⁷ Ltd the National Commission for the first time took note of high rising prices of the real estate properties. It stated that “a consumer cannot be allowed to be swindled by an unscrupulous builder”. In *Gujarat Housing Board v. Akhil Bharatiya Grahak Panchayat*²⁰⁸ the complainant had filed a suit for poor construction and delivery was delayed and the price of house was reduced thereby. But the State Commission refused to provide the relief on the ground that it did not have jurisdiction to interfere with respect to price. The National Commission dismissed the appeal on the ground that since the complainant did not demand compensation under the same above, it could not entertain the appeal now. But in *M.P. Bhaya v. Malti Yogesh Karia*²⁰⁹, the National Commission had directed the opposite party to deliver the possession of flats within 2 months as all other buyers were provided

²⁰⁵ 1995(2)C.P.C 598

²⁰⁶ I 1994 CPR 9 (SC)

²⁰⁷ I (1996) CPJ 51 (NC)

²⁰⁸ I (1996) CPJ 41 (NC)

²⁰⁹ II (1996) CPJ 138 (NC)

with flats. The complainant received 18% of interest on a sum of Rs 8,46,000 and Rs 50,000 for mental harassment. But in Kashmiri Migrant case the National Commission took a very strict view in holding the builder liable for his deficiency. The builder in his advertisement promised to build houses and commercial plots but they were in fact agricultural land. The National Commission granted compensation at 28% of interest to all the consumers in addition to the basic amount they had paid to the builder. The present position has been settled in *Assam State Housing Board v. Manoj Kumar*²¹⁰ the consumer forums will deal with prices only if prices are fixed by law or seller has intentionally to take advantage of the consumers or inordinate delay in the delivery of goods. So, finally the consumers were expected with some relief as to the fixation of price of the real estate properties. But National Commission in one of the cases stated that if defects are found in construction flats, he shall be compensated as he is the consumer. In *Pushpa Builder Flat Buyers Association v. Pushpa Builders Ltd*²¹¹ the National commission held that construction of flat is within the meaning of service under section 2(o) of the Consumer Protection Act 1986. Hence, when any person hires a builder for construction of his property he is a consumer. The Commission further held that parking space has to be provided with the immovable property and no separate contract will be formed for the same.

Insurance problems are very common among citizens especially the life policy issues and they are largely solved by consumer forums in order to provide the relief to the consumers. In *Chinnama v. Div. Officer, Life Insurance Corporation*²¹² the National Commission had set aside the order of State Commission on the ground that repudiation of claim by itself could not constitute a bar for the maintainability of a claim of the insurance provided the insurer was able to establish before the forum that there has not been due application of mind. In this case, the LIC had not repudiated the claim in good faith as it had not established any nexus between peptic ulcer for which he had undergone through the treatment and heart attack which was the cause of death. It is unfortunate that policy guidelines adopted by the corporation's decade ago still form the basis for the response to claims by the insured. In *Ram Naresh Sinha v. Divisional*

²¹⁰ II (1996) CPJ 47 (NC)

²¹¹ II (1996) CPJ 212 (NC)

²¹² III (1996) CPJ 136 (NC)

Manager, LIC²¹³ the National Commission had given benefit of doubt to the claimant and allowed his claim. In this case, the original policy contained a pregnancy clause while copy produced by the claimant did not have the same clause. The forum held that there was no clear evidence that policy had to be subjected to the clause and hence once could convincingly imply that policy was not subject to it.

In S.B.Girijamba v. Senior manager, LIC²¹⁴, the State Commission had affirmed the repudiation made by the legal heirs of the insured as he was proved to be intoxicated during time of death. It is often found that consumer forums are full of insurance claims disputes. They have even reached the Supreme Court. In B Nagaraju v. Oriental Insurance Co.²¹⁵ the Supreme Court had rejected the decision of National Commission. The goods vehicle was carrying extra passengers which was in violation of the terms of the policy such as fundamental breach as to afford ground to the insurer. The court held that exclusion term of policy of insurance should be given equal importance as to the main purpose of the policy so that damage caused to the vehicle shall be indemnified. In United India Insurance Co. Ltd. v. MKJ Corporation²¹⁶ the Supreme Court had laid down guidelines with respect to rights and liabilities of the insurer. The Supreme Court had focussed on utmost good faith between the contracting parties when they enter into contract. Both the parties are expected to be transparent with each other and not forbid any important information. The insured is supposed to give out all the information whereas it is the duty of the insurer to disclose all material facts within his knowledge.

Medical Services are also covered under the Consumer Protection Act till a certain extent.

In a Indian Medical Association v. VP Shantha²¹⁷ the Supreme Court defined rights and obligations of homeopathic and allopathic systems of medicine. In another case, Poonam Verma v. Ashwini Patel & Ors²¹⁸ a medical practitioner had registered himself as homeopathic practitioner. He treated one of his patients named as Poonam for an

²¹³ I (1996) CPJ 130(NC)

²¹⁴ I (1996) CPJ 224(Kar)

²¹⁵ II (1996) CPJ 18(SC)

²¹⁶ AIR 1997 SC 408 at 409

²¹⁷ III (1995) CPJ I (SC)

²¹⁸ II (1996) CPJ I (SC)

ailment without conduction pathological tests for the same and thereby prescribed the allopathic treatment without having good knowledge about them. Due to wrong treatment the patient died. The Maharashtra State Commission in this case did not provide any relief to the victim. In an appeal to Supreme Court, the court held that a registered practitioner cannot enter into another field of medicine like that and he had trespassed a field and he was liable under Section 15(3) of the Indian Medical Council Act, 1956 i.e. negligence per se. Hence, he was liable to pay compensation of Rs 3 lacs, and cost of Rs 30000. This judgement was largely a victory for all the members of allopathy. A person cannot practice if he has no knowledge about that system of medicine and most importantly not registered in that. The court further stated that knowledge of one system of medicine cannot outlaw the knowledge of other system. Large number of people in our country have deep faith in our medicinal system and hence practitioners should use that for the benefit of patients only and not for some experiment on them of their trial and error. The National Commission has tried to provide some guidelines for the calculation of compensations in medically fraudulent cases. In one of the another famous cases, *Sau madhuri v. Dr Rajendra*²¹⁹ doctor had negligently conducted operation in a negligent manner on his patients. The surgeon had left a tool in the body of patient which caused pain and endangered the life of patient further leading to another operation. And eventually the second operation, led to removal of an intestine. The National Commission differed from its view in prior cases as to setting up of standard guidelines in cases of medically fraudulent cases. The factor which should be taken into consideration for calculation of compensation is agony and discomfort caused to the patient. But in *Dr N.T. Subhramanyam v. Dr Krishn Rao*²²⁰ The State Commission had rejected the complaint against respondent on the ground that there was no gross negligence found as stated by the complainant. The National Commission stated that principles of medical negligence have been settled by judiciary in various cases. A doctor has committed negligence if he has not taken reasonable standard of care medically. A doctor cannot be said to be negligent because of some error in the opinion.

Postal Services have also found relief under consumer protection law. But in *presidency Post Master v. U Shanker*²²¹ the National Commission had limited the liability of the

²¹⁹ III (1996) CPJ 75 at 77 (NC)

²²⁰ II (1996) CPJ 233 (NC)

²²¹ II (1993) CPR 1141 (NC)

postal authorities in terms of delivery of postal goods under the Section 6 of Indian Postal Services Authorities Act, 1898. But the National Commission has resiled from this position in recent cases. In Superintendent of Post Officer v. Upvokta Surakshya Parishad²²² the post office had to get the letters stamped of the complainant so that they could be delivered on time. But the same duty was performed late resulting in late delivery of letter. The District forum awarded Rs 2000/- as compensation to complainant which was affirmed by the State Commission. In revision appeal, the National Commission stated that since the act should have been done but the postal authority failed to do the same on time, it shall be covered under “wilful acts” mentioned in Section 6. The Commission made suggestions w.r.t amendment of Post Office law so as to make it accountable authority.

In Union of India v. Manoj Kumar²²³ the National Commission held that in reduced rate of interest National Saving Certificate would not entail liability on postal service authority if it has not stamped the certificate. It further held it does not amount to deficiency of service.

Carriers industry is also covered under the “services” of consumer law and it is well settled that a party to the contract cannot claim more than agreed amount as compensation for the loss of goods. Nath Bros Exim International Ltd v. Best Roadways²²⁴ the goods of the complainant were lost from the godown of the carrier as a result of fire. The carrier argued that goods of the consignee were not insured and hence goods were at owner’s risk. But complainant under Section 9 of the Carriers Act, 1865 stated that in a suit for loss, damage or non-delivery of goods, the plaintiff is not liable to prove negligence of the carrier. The National Commission favoured the decision in favour of carrier refusing to hold it liable as they were not negligent in performance of their duty and held that consignee had sent goods at his own risk. However, in another case²²⁵ the National Commission had decided in the favour of consignee where his goods were destroyed by fire. The complainant had sent 257 generator sets to the opposite party by the carrier but consignment was not delivered to

²²² III (1976) CPJ 105 (NC)

²²³ II (1996) CPJ 114 (NC)

²²⁴ III (1996) CPJ 91(NC)

²²⁵ Birla Yamaha ltd. v. Patel roadways Ltd. II (1996) CPJ 40 at 42 (NC)

the destination and consignee was told that they were destroyed by the fire. The commission held that loss of goods was prim facie evidence of negligence. The complainant was entitled to compensation.

In *Jinadal Photofilms v. Indian Airlines*²²⁶, the Indian Airlines was consigner and it failed to deliver the goods i.e. 4 boxes to the consignee because of pilferage. The State omission had granted compensation at the rate of Rs 160/- kg as per limitation of the carrier. On an appeal to the National Commission, consumer invoked Rule 24 of Carriage by Air Act, 1972 on the ground of wilful act of the carrier. The National commission dismissed the appeal by differentiating between wilful act, negligent act and reckless act.

*The Old Village Industries Ltd v. Air India*²²⁷ the National Commission had to decide the liability of the carrier for non- delivery of consignments at the destination. The goods were supposed to reach the destination through Air India Airlines carriage. It delivered the goods till Nairobi and further it had to be lifted through other airlines known as KLM and Swaziland. KLM carried the goods till Johannesburg but it was not carried by Swailand Airlines claiming that there was constraint of space. The National Commission did not hold any consigner liable only on the condition that consignee had failed to give an alternative option. This judgement was highly criticised across the country on the fact that justice was not done to the consumer and National Commission had been highly careless in pronouncing their judgement. In *Air France v. Patel Exports India*²²⁸ the carrier had to deliver goods of the consignee from Madras to Zurich but he did not negotiate regarding the documents and amount to be collected with him. Later the State Commission allowed compensation of Rs 4,57, 474/- at 19% interest for non- delivery of the goods. The National Commission affirmed the decision but reduced the rate of interest to 18%.

In *PSN Rao v. Vennine Carriers*²²⁹ the complainants car had been damaged while being in custody of the carrier. He was not delivered his car for more than 10 months, the opposite party was directed to compensate the complainant with Rs 10,000.

²²⁶ II (1996) CPJ 168(NC)

²²⁷ III (1996) CPJ 41 (NC)

²²⁸ III (1996) CPJ 143 (NC)

²²⁹ 1992 (2) CPR 705 (NC)

Railway Services in India are also covered under the consumer protection law and there are many cases where National Commission has criticised and penalised the railways for their insufficient services to the passengers.

In *Union of India v. M.H.Pathak*²³⁰ the complainants had reserved their seats with valid tickets but were forced to vacate them by miscreants and were beaten up for resisting to vacate and suffered injuries and permanent disability. The District forum and State Commission held the railways liable but on a revision appeal to National Commission, the forum held that it was the responsibility of the railways to carry the passengers safely from the departure till arrival at the destination as consumers had paid for their service. Section 147(2) of the Railways Act, 1890, the railway authorities had right to throw unauthorised persons in the train premises and they had failed to perform their duty under this section. Hence, the railway department was responsible.

Telecommunications has always been controversial topic under the consumer protection law as many telecommunication authorities use their arbitrary power against consumers making them agitated. In *District Engineer telecommunications v. Roshan Lal Aggarwal*²³¹ mill had failed to pay the bills timely twice which resulted in disconnecting of telephone line not only at mill but all at residents. The National Commission held that arrears were found to be made in the name of mill and not in the name of Aggarwal. Hence, disconnection of telephone at residence was an arbitrary act and not legal.

5.6 Execution

Section 27 of the Consumer Protection Act, 1986 provides rights to consumers for their execution of orders. This section imposes liability on the party if its orders are not complied with. In *Sambhavana Builders Aggrieved Members Association v. Sambhavana Builders (P) Ltd*²³², the respondent was asked to pay Rs 5,00,000/- and attach his property as compensation as per the original petition. The respondent failed to comply with the orders and the National Commission issued warrant orders against

²³⁰ II (1996) CPJ 31(NC)

²³¹ I (1996) CPJ 335 (NC)

²³² III (1996) CPJ 167 (NC)

the three directors of Sambhavana Builders and detained them for the period of three months by way of punishment.

Section 27 is a remedy in criminal law. Non-compliance of the order within the time prescribed therein is an offence and is punishable. Maximum and minimum punishment of imprisonment or fine or both has been prescribed under the Act. Once a violation is proved, the offence is complete and what remains to be done is the imposition of the punishment for the violation of the order ingrained in favour of the forum which passed the order.

5.7 Limitation Period

Section 24-A of the Consumer Protection Act deal with limitation period of the District Forum, State Commission or National Commission. Under the Consumer Protection Act, the limitation period is 2 years from the date of cause of action. The forum can also relax limitation period depending on reason for the delay. The question of limitation can be raised at any time.²³³

In *Jaya Kumar v. National Insurance Company*, the National Commission held that for calculation of 12 months would be from the date of regional office and not the branch office.

5.8 Limitations of the Consumer Courts

The Consumer Protection Act, 1986 laid down provisions for disposal of complaint under section 22 of the Act, which states about powers and procedures applicable to National Commission. It states that National Commission shall have powers of a civil court specified in Section 13(4), (5) and (6) and shall further direct the opposite party to do any one or more thing mentioned in Section 14 (a)(i)(1). Section 14 of the Act deals with the power of District forum, State commission and National Commission to issue orders.

But the Act has not provided for any provision to grant interim relief and the Act very clearly states that only after the proceedings are conducted under section 13, the

²³³ *Kerela Agro Marketing Corpn Ltd v. Bijoy Kumar Roy*, (2002) 3 SCC 165

consumer forum can pass orders under Section 14. Under Section 13(4)²³⁴ of the Act, the consumer fora can exercise the powers of civil court but it cannot any situation where interim relief can be granted. The issue which arises is if consumer for a can issue any relief at all as such.

In *Morgan Stanley Mutual Fund v. Kartik Dass*²³⁵ the Supreme Court had held that Consumer forums do not have any power to grant interim relief at all and no interim relief can be granted. The same decision was reiterated in *Gulzari Lal Aggarwal v Accounts Officer*²³⁶ where the court held that Consumer forums have no jurisdiction or power to pass any interim order pending disposal of the original complaint filed before it. It is well settled principle that unless a tribunal set up under a special statute is vested with such power under the statute itself, it cannot pass an order of interim relief nor can such a tribunal exercise inherent powers under the CPC, if the tribunal is not a court. The section 13 of the Consumer Protection Act, 1986 has made it very clear that neither District forum nor State commission could grant or pass an ad interim order nor are any of those tribunals a civil court so as to be deemed to enjoy the inherent power embodied in CPC.

However, a judicial authority which possesses jurisdiction to pass a final order in a matter must also possess the jurisdiction to pass an interim order since if the tribunal is not granted such powers, the parties may attempt to circumvent the proceedings by taking an action that may jeopardize the interest of the order party.

5.9 Conclusion

²³⁴ For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,
- (ii) the discovery and production of any document or other material object producible as evidence,
- (iii) the reception of evidence on affidavits,
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source,
- (v) issuing of any commission for the examination of any witness, and
- (vi) any other matter which may be prescribed.

²³⁵ (1994) 4SCC 225 para 44.

²³⁶ (1996) 9 JT 103

The Consumer Protection Act, 1986 is one of the benevolent pieces of legislation intended to protect consumers from exploitation. The Hon'ble Supreme Court and Commissions have decided many cases on various matters like electricity, postal services, housing matters, insurance matters etc. The legislature enacted forums at various levels so as to ensure speedy resolution of the disputes for consumers to be benefited at large. These quasi-judicial bodies operate on the basis of natural justice and award appropriate compensation wherever necessary as they are empowered to give reliefs of specific nature by the statute. And if any non-compliance is observed, penalties are given. The Consumer Redressal Agency is acting as civil court while giving reliefs to the consumers especially in cases relating to "deficiency of service" but at certain times, the jurisdiction exercised by these bodies is very wide but not exhaustive. But they are very confused with respect to their jurisdiction in subject matters of the disputes. It has been observed that the National Commission has taken different view with respect to similar subject matter in different cases and are also hesitant to widen their subject matter as provisions of the statute do not allow them to do so. Though the legislature has given them the powers of civil court, it has turned out to be bane for the redressal agencies as they are very unclear with respect to their jurisdiction because of which there is no uniformity in deciding the matters of similar subject matters and hence shows failure of the implementation of the Act in some aspects.

CHAPTER –VI

Conclusion and Suggestions

6.1 Introduction

The scholar in this dissertation tries to understand if the new legislation passed by the Parliament in 2019 named as Consumer Protection Act, 2019 is able to fill the defects of Consumer Protection Act, 1986. This was only possible after two failed attempt in the last four years. The aim of this new legislation is to protect the rights of the consumers and strengthen relations between consumer and seller which shall be done regulatory authority for timely and effective administration and settlement of consumers' disputes. This act provides robust redressal grievance system for protecting and enforcing consumer rights. The whole Act was drafted keeping in mind the challenges faced by the consumer in the digital world. And provisions for the same have been included which are discussed in the dissertation.

Chapter 1 titles Introduction chapter which gives a brief about the Consumer Protection Act, 1986 and why there was a need of the Consumer Protection Act, 2019. The 1986 Act initiated a legal revolution by ushering, in the era of consumer protection a new legal culture among the masses to take recourse to the Consumer Protection Act, 1986 regardless of their grievances. This Act has been successfully implemented till large extent since last 25 years and lacs of citizens have been benefited from this legislation but after neo-liberalisation, there were rapid changes in the consumption pattern of the modern consumer which brought challenges in such a way that new approaches were needed to adapt. Technological changes made our lives easier to large extent but also generated imminent threat to consumers to deal in e-commerce like internet banking, plastic money, cyber related crimes. Though consumers have large choices to buy from but do not have appropriate assurance about quality of goods and services, unfair trade practices, non-application of guarantee rules are posing serious concern for the governments all over the world. Large number of consumers are getting deceived. It is important to provide teeth to adjudicatory structure of consumer legislation so that they are able to deal with new age problems faced by the consumers in globalised era. The

21st century is a globalised era where information and technology together have given birth to complexities and information asymmetry. The global issues are calling head for bold policies and planning realms relating to consumer protection.

There were large number of shortcomings and deficiencies under the Act which led to large number of cases pending and delay in their disposal and hence. The biggest shortcoming was that e consumers did not have any protection under the 1986 statute. In order to fill these gaps, The Consumer Protection Act, 2019 was introduced. The Act has introduced new concepts relating definition of consumer, unfair trade practices, unfair contracts and misleading advertisements. The scholar through this dissertation aims to understand how far the new statute shall be successful in protecting the constitutional consumer rights in this rapidly growing digital world and offline market structure and analyses the new developments introduced to it.

Chapter 2 titles Consumer rights- Constitutional Rights and Human Rights Perspective. The chapter introduces the rights of consumer which are enumerated in the Consumer Protection Act, 2019 and explains them that they though have been prescribed in the Act, their origin is from Part III and Part IV of the Constitution. The term consumer was introduced by John F Kennedy in his 1962 speech where he also mentioned about the consumer rights. The many scholars across the world attempted to define the word. The Black's Law Dictionary defined it a consumer" as a person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes. For very long this definition was accepted in common law countries and their laws were based on this narrow approach only. The consumer himself has gone through transformation to a large extent in a short period of time and therefore the meaning of consumer has been subject to change from time to time and place to place. Consumers have continued to develop and evolve and therefore the market system has also changed in response to consumer behaviour in response to consumer behaviour. There has been shift from caveat emptor to caveat vendor which has been discussed by the scholar in this chapter. In India, constitution is the grundnorm and all the other laws are deduced from it. The document is very vibrant in nature and it is so comprehensive that judiciary has used the perfect opportunity to interpret its words in the most creative manner. The constitution of India is not a bare text, but a living document which has evolving character. The scholar has interpreted the constitution and come to conclusion that

consumer rights are based on Article 14, Article 19, Article 21, Article 38, Article 39 and Article 47 of the Constitution. These rights are very important for consumer welfare in India as most of the consumers are unaware about their rights and often cheated by the sellers as they want to make quick money. Hence, the scholar through daily activities and examples have explained the audience the importance and source of the consumer rights from constitutional perspective in detailed manner. The scholar further has explained how the Consumer Protection Act 2019 has widened the scope of definition of consumer in order to protect the consumer interests at large. One can successfully claim that Consumer Protection Act 2019 shall be good enough to protect the interests of the consumers in this modern world.

The second part of the chapter explains that how the consumer rights also form part of human rights. The scholar has explained the characteristics of human rights i.e. Human rights are applicable to whole world and do not belong to particular group of people, the primary concern of human rights is individual's dignity, development and honour and human rights can only be enforced against the state. The main idea behind introduction of consumer rights is entitled to protection to consumers irrespective of cost benefit analysis. And consumer rights protect individual's honour, dignity and development which is one of the facet of human rights. Therefore, consumer rights can be declared as human rights. Another aspect of human right is human dignity which has been given wide recognition in various international conventions.²³⁷ Human dignity is related to economic and social character of human right. The intrinsic worth of each person is drawn through the same. The human rights can be strengthened by incorporating new rights and applying to them in new circumstances. In a free market economy, protecting consumer from unfair trade and unfair contract is to maintain their dignity. Consumer rights are equally important as human rights. The international documents have time again and again showed an inclination to recognise consumer rights as human rights. Hence, it is the hour of the need to recognise consumer right as human right and constitutional right internationally and nationally.

²³⁷ O. Schachter, "Human Dignity as a Normative Concept: Editorial Comment" (1983) 77 Am. J. Int'l L 848 at 848.

Chapter 3 titles Consumerism and Globalisation. The scholar in this chapter has explained the consumerism in depth and how globalisation has affected the consumer choices. The consumer movement in India was started late as compared to another economy. Consumerism means protecting the interests of the consumers at large. According to this concept, the sellers are at liberty to produce any commodity in any manner and style to push them into market place, if they are not injurious to public health and safety. A necessary concept is that there should not be any discrimination with regard to prices amongst similar sections of buyers. A seller has right to promote his product, only the condition is that it should not fall in the category of unfair practices and competition. The scholar has explained the concept of consumerism and the development of consumer movement in international world. The chapter also discusses the development of consumer social movement in India but it could not bloom up as much as it did so in other jurisdictions. The scholar in this chapter is trying to understand that the aim of the Indian consumer law i.e. understands the position of the consumer in a commercial world and also to see that the system of law, substantive and procedural is so designed so as to ensure a fair and reasonable balance between the buyer and the seller. The task is not giving unreasonable rights to the consumer but striking a balance between the rights of buyer and seller in the present commercial world. Further, scholar explains the concept of globalisation as a phenomenon where regional countries, societies and culture integrate through communication and trade at global level. The history of globalisation at international and national level has been written so as to explain that how it eventually changed the consumer behaviour and it eventually became difficult for present consumer law to keep up with the protection of rights of consumer and hence Consumer Protection Act, 2019 was necessary to be introduced. The consumers across the world got varieties to choose from, prices were lowered and quality of the products became focus point for all the businessman in order to satisfy their customers. Globalisation has led to a phenomenon where brand find it easy to manufacture their products where labour is cheap and then sell it off anywhere in the world. Consequently, the Indian industry globalised at large scale. The integration of global economies with domestic economy helped to improve Gross Domestic Product which set up a good position in the world. Large number of foreign investments were observed in BPO, pharmaceutical, petroleum and manufacturing industries which resulted in boosting of Indian economy. After liberalisation, many foreign industries set up their manufacturing units in India thereby providing employment to large masses

of people and supporting in reduction of poverty. India saw development of IT industries and this helped in development of skilled professionals who provide service to European and US clients. Many foreign countries have taken advantage of highly talented young professionals of India at lower costs and uses communication technologies such as mails, internet, voice over IP and they outsource knowledge-worker operations by lowering the costs. Indian market industry grew due to introduction of highly advanced technology. The growth of e-commerce across the globe has been exponential, revolutionising the traditional process of buying and selling of goods and services. The growth in ecommerce has been unprecedented undoubtedly benefitting the consumers leading to more competitive prices, availability of wider range of goods and more convenient services. E-Commerce in India has enabled businessman to bypass the traditional intermediaries in domestic jurisdiction, while being able to access global markets. Due to lower transaction costs, e-commerce has widely increased in the number of sellers and suppliers in the market thus increasing diversity and competition in the market. Therefore, E-commerce has been rightfully recognised as the new face of entrepreneurship which encompasses existing companies, organisations, small businesses and individual online traders. At such stage, it is important to protect the interests of the e-consumers which would confidently impact the confidence of e-consumers causing an increase in online trade. Studies have revealed that e-consumers face a numerous task such as masking, catching, disclosure of private information without consent, phishing, hacking of bank accounts, misrepresentation of products, non-delivery of goods and poor quality of services. There are online market places like Amazon, eBay, Flipkart where often violation of consumer interest has been reported. In order to understand the challenges of e-consumers in India, let us study eBay model which is an online intermediary that has achieved unprecedented success within few years. But it had many controversies relating to abuse of consumer interest and copyright infringement.²³⁸ The sellers sell their products and services online independently through auction or fixed price and eBay only serves as online market place. Though it is not involved in direct selling and buying, it does earn its share of revenue from sellers. But it does not take any responsibility in case of violation of consumer interests. It does not take any

²³⁸ Ibid

responsibility for the items listed on the website.²³⁹ The information about the product is called “third party user generated agreement”²⁴⁰ and thus enables eBay to deny responsibility for any misrepresentation regarding the attributes of the product and fake sellers. Thus eBay has constructed a legal framework to protect itself from any liability arising out of consumer dispute. The Consumer Protection Act, 1986 does not apply to role of intermediaries like eBay. The Act only covers vendors and manufacturers and corresponding deficiency in goods and services but it is completely silent on accountability of online market places such as eBay. Hence, for such occasions, the New Act was needed which could exhaustively cover protection of consumers in e-commerce industry and hence the Consumer Protection Act, 2019 was introduced as on many occasions in this globalised world, the Consumer Protection Act, 1986 did not have enough provisions to protect the interest of consumers effectively.

Chapter 4 titles judicial approach on consumer law. The scholar in this chapter explains as to how consumer forums and judicial trends have been related to consumer matters on different areas like electricity, insurance, jurisdictional matters etc. Judiciary in the arena of consumer protection has been trying to perform a proactive role but consumer forums have largely contributed to the same. But due to inordinate delay and large number of pending cases, consumers have not been very active in participation in litigation process. They fear of paying heavy fees to the counsel to represent their cases though one can appear for himself in the forums. The Supreme Court in 1994 in Lucknow development Authority²⁴¹ case had given the widest possible interpretation to term “service” but same was again constrained in its scope in SP Goel v Collector of Stamps²⁴², where court refused to consider the duty of Controller of Stamp under the Stamp Act, 1899 as “service” despite the officials committing gross negligence which resulted in large loss to consumers. This led to controversy that courts were changing their interpretations of concepts of consumer law when it had to decide between sovereign and non – sovereign functions. Poonam Verma v. Ashwani Patel and Ors²⁴³ where Supreme Court analysed the rights and liabilities of the medical practitioners and

²³⁹ User agreement of eBay. Available at their website

²⁴⁰ Ibid

²⁴¹ Lucknow Development Authority v M.K Gupta AIR 1994, SC 787

²⁴² 1 (1996) CPJ (SC)

²⁴³ II (1996) CPJ 1 (SC)

held that only those people are eligible to practice who have knowledge and skill to do the same and not mere pretenders as no human has right to exploit the consumer due to illiteracy or poverty. Similarly, National Consumer Forum has attempted to decide consumer disputes relating to electricity, water, railway, carriage, insurance etc. The scholar has pointed out some important judgements of Hon'ble Supreme Court on the point of Consumer Protection Act, Quasi -Judicial machinery and speedy disposal of the cases. Consumer should be provided justice in less time and less cost which is the whole objective of the Act. But due to complex matters in e-commerce jurisdiction and digitalised world, it became difficult for forums to decide those matters with the given provisions and hence justice could not be provided sufficiently to the courts.

Chapter 5 titles Comparative Analysis of Consumer Protection Act, 1986 and Consumer Protection Act 2019. The scholar has briefed about all the legislation in pre independence era which was used to deal with consumer like Tort law, Contract Act, Indian Penal Code, the Sales of Goods Act, Capital Control Act, and many more. Post-independence era, many more legislations were introduced like Indian Companies Act, Monopolies and Restrictive Trade Practices Act, etc. The above mentioned legislations marked the beginning of an era of active consumer protection in India. However, the consumer could not very well accommodate these new legislations as they still continued to be cheated by the manufacturers, distributors, and retailers. Finally, after movements conducted by various Consumer Groups like Consumer Education and Research Centre and citizens of the India across India and the season of Public Interest Litigation led to birth of Consumer Protection Act, 1986. The Act wanted to provide speedier justice to the victims and create a revolution in the field of consumer protection, education and guidance. But the problem of consumer protection in the framework of e-commerce has gained a huge amount of consideration both from academicians and policy-makers. The governments as well as inter-governmental organizations have come up with various frameworks to deal with e-commerce and e-consumers and a review of existing legal framework shows that it has failed to address e-consumer needs. It has not been able to protect the consumers from infringement of their rights. The Consumer Protection Act, 1986 specifically excludes from its ambit the rendering of any service that is free of charge. If an online platform is not charging the users, the CPA may not apply. Thus India is in need of consolidating the law to deal with all above-mentioned situations so that the electronic consumers' right can be

protected properly. Hence, the Consumer Protection Act, 2019 was introduced which has brought many additions required in this globalised world. The new Act proposes a slew of measures and tightens the existing rules to further safeguard consumer rights. Introduction of a central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service providers are some of the key highlights. The scholar has attempted to analyse and explain so as to how these key features will be helpful in protecting the consumers against exploitation and malpractices.

6.3 Suggestions

The Consumer Protection Act, 2019 was passed after 30 years of the old Act being passed. Technology has progressed a lot in these years and while the older act tried to keep updated with small amendments here and there. The repeal of the older act and the establishment of the 2019 act was much needed. The state has been thoroughly analysed by the scholar and it is evident that the present Act is a consolidated one which aimed to expand the protection of consumers in widest way possible. The Act has successfully kept pace with the evolving times as it has included e-commerce and technology together. But there are some serious concerns which should be addressed and here are the solutions to the same.

- The religious fan following that India gives to its celebrities, whether they are film stars, cricketers, etc. imposes a tinge of responsibility (if not more) on these celebrities to watch what they say rather than act merely as a carriers of information. Especially when their fan following is prone to mental and physical health hazards. Nevertheless, such a responsibility, though can be imposed on the ‘morals’ that the celebrity endorses, the same cannot be imposed for the defects in the products he/ she endorses. Hence, a celebrity cannot be expected to know the details of the product/services as to how harmful they are to the consumers. Therefore, some relaxations should be provided to the celebrities with respect to this provision.
- The Consumer Redressal Fora should be vested with powers to issue interim injunctions restraining an undertaking or person from carrying on any unfair trade practice as defined in Act. This defect was also found in the old statute

due to which often the damage was suffered by the large masses of the consumers as no action was taken against the seller, trader or manufacturer till the case was decided. Hence, it is the need of the hour for the court to be provided the power of issuing interim injunctions at their discretion.

- The lawyers should not be made part of all the matters. The court after hearing the matter at first instance decide if the engagement of lawyer is necessary so as to avoid the stretching of the matter at length in trivial issues also. And if the complainant engages the lawyer, he should give the reason for the same to the forum. Further, adjournment should be given only in exceptional cases and not made a regular habit by the forum. The copy of the order should be made available online to the parties immediately after final hearing so that no time is wasted in filing the appeal.
- In the E commerce and globalised world, there should be scope of online hearing of matters through video conferencing so that lot of time and money is saved for both the parties and small matters are also disposed of at the earliest.
- The Act should be amended to empower Consumer Courts to publish the names of manufacturers, traders and dealers whose goods are found to be hazardous to public safety. This empowerment would work as a deterrent to the erring business community.
- The Commissions are intended to be quasi-judicial bodies, while the government is part of the executive. There may be instances where the government is a party to a dispute relating to deficiency in service provided by a government enterprise, for e.g., the Railways. In such a case, there would be a conflict of interest as the government would be a party to the dispute before the Commissions and will also have the power to appoint members to the Commission.
- Another shortcoming of the Act is that it has not given any provision with respect to medical negligence faced by the consumers. But the same was provided in the old Act, hence the old provision should be reinstated in the New Act.
- Consumer rights should be made compulsory as part of the Social Science in schools as the consumers are largely exploited due to unawareness of their rights and children could be source of information to their parents.

- The consumer rights should be made part of International Covenant on Economic, Social and Cultural Rights as even though the legislations differ, the principles based on which consumer legislations are based are applicable universally and shall remain same.
- The Consumer Forums should also be given directions by the Parliaments with respect to their subject matter jurisdiction as it has been often observed that there is confusion with respect to matters which forums can decide because often the forums deny their jurisdiction stating that matters lies within the civil jurisdictions but the issue is not so.

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ACTS

The Consumer Protection Act, 1986

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