
COMPARATIVE ANALYSIS OF THE CONSUMER PROTECTION ACT, 1986 AND CONSUMER PROTECTION ACT, 2019

M. Aashika & Boobesh.S, BCOM LLB (Hons), Sastra Deemed University,
Thirumalaisamudaram, Thanjavur

INTRODUCTION

The Consumer Protection Act (CPA) of 1986 was introduced to protect the interests of consumers and ensure fair trade practices in India. However, with changing times and increasing complexities in consumer disputes, a new Consumer Protection Act was introduced in 2019 to address the gaps and limitations of the earlier act. The new Consumer Protection Act (CPA) of 2019 has brought in significant changes such as the establishment of the Central Consumer Protection Authority, the inclusion of e-commerce transactions, stricter penalties for false and misleading advertisements, and more. This article will compare the key provisions of the Consumer Protection Act 1986 and the Consumer Protection Act 2019, highlighting the similarities and differences between the two acts.

SCOPE

The Consumer Protection Acts of 1986 and 2019 will be contrasted in this article in five categories: coverage, redressal mechanisms, product liability, e-commerce, and penalties. We will look at the categories of goods, services, and transactions that each Act regulates, as well as the channels available for resolving consumer complaints and the authority and duties of these channels. We'll also contrast the rules covering product responsibility, online shopping, and the consequences of violating consumer rights. By doing so, we hope to give a thorough study of the two Acts and emphasise the improvements made in the 2019 Act to defend consumers' rights in India.

COVERAGE

Definition of "Consumer": The definition of "consumer" has been expanded to include persons who buy goods or avail services online, through tele-shopping or direct selling.

Section 2(7) - The definition of "consumer" was amended to include persons who buy goods or avail services online, through teleshopping or direct selling.

This covers the assortment of products, services, and transactions that are covered by each Act in the context of the Consumer Protection Act of 1986 and the Consumer Protection Act of 2019. The Consumer Protection Act of 1986 only applied to products and services and had a narrow range of application. The Act covered the sale, purchase, manufacture, and provision of goods and services, but it did not apply to other activities like e-commerce, direct sales, or telecommunication services. On the other hand, the Consumer Protection Act of 2019 has broadened the definition of consumer protection to encompass digital things like software, data, and online services in addition to physical goods and services. The Act has also included additional regulations to safeguard consumers in e-commerce transactions, direct selling, and telemarketing. The Act now covers unfair trade practices, misleading advertisements, and other deceptive practices, which were not covered under the previous Act. The Act also addresses product liability, which makes sellers, service providers, and manufacturers liable for any harm a defective product may cause to a customer. Overall, the coverage of the Consumer Protection Act 2019 is much broader and more comprehensive than the Consumer Protection Act 1986, as it includes new types of transactions and products that were not covered earlier. This expansion of coverage is intended at giving greater protection to consumers and ensuring that their rights are preserved in the continually shifting economy.

PRODUCT LIABILITY:

Section 83:

A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

Section 84:

1) A product manufacturer shall be liable in a product liability action, if--

(a) the product contains a manufacturing defect; or

(b) the product is defective in design; or

- (c) there is a deviation from manufacturing specifications; or
 - (d) the product does not conform to the express warranty; or
 - (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.
- (2) A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

Product liability is the legal obligation placed on producers, merchants, and service providers to make good on any harm done to customers as a result of a defective product. In other words, these organisations have a legal duty to make sure that their products are secure and devoid of flaws that can endanger consumers. Manufacturers and sellers were responsible for any harm to consumers brought on by product flaws under the Consumer Protection Act of 1986. The concept of product liability, however, was neither defined nor elaborated upon by the Act. A particular clause on product responsibility has been added to the Consumer Protection Act 2019 that outlines the duties of producers, sellers, and service providers in assuring the quality and safety of their products. Because of the Act's strict liability provisions, even if a manufacturer, seller, or service provider was not negligent or had no malicious intent to hurt the consumer, they would still be responsible for any damages they caused as a result of a product defect. The Act defines a "product" as any goods or service which is manufactured, processed, assembled, or imported for sale, lease, or hire, and includes any component or raw material used in the production of the goods or service. The Act also provides for three types of product defects: manufacturing defects, design defects, and defects in information or instructions. A manufacturing defect occurs when a product does not conform to the intended design due to a flaw or error in the manufacturing process. A design defect occurs when the design of the product is inherently dangerous or defective. Defects in information or instructions occur when the manufacturer fails to provide adequate warning or instructions for the safe use of the product. If a consumer is harmed by a defective product, they can file a complaint with the appropriate consumer forum established under the Act. The forum may order compensation to the consumer, order a recall of the product, and impose penalties on the manufacturer, seller, or service provider for their negligence or failure to ensure the safety and quality of the product. Overall, the concept of product liability under the Consumer Protection Act 2019 is aimed at ensuring that manufacturers, sellers, and service providers are held accountable for any harm

caused to consumers due to defective products, and at promoting the safety and quality of products in the marketplace. any harm caused to consumers due to defective products, and at promoting the safety and quality of products in the marketplace.

ENHANCED PENALTIES:

The penalties for various offences under the Act were significantly enhanced. The maximum penalty for misleading advertisements was increased to Rs. 10 lakhs for the first offence and Rs. 50 lakhs for subsequent offences.

Section 21(2):

Notwithstanding the order passed under sub-section (1), if the Central Authority is of the opinion that it is necessary to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees:

Provided that the Central Authority may, for every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.

Enhanced penalties refer to the increased punishments or fines imposed on violators of a law or regulation. Those who engage in unfair business practises, false advertising, or other deceptive practises that harm consumers are subject to increased penalties under the Consumer Protection Act of 1986 and the Consumer Protection Act of 2019. For those who violate the Consumer Protection Act of 1986, there are fines and possible jail time. Consumers might get a maximum of Rs. 20,000 in compensation, and violators could face a maximum of Rs. 10,000 in fines. The Consumer Protection Act 2019 has significantly increased the penalties and fines for violations of the Act. The Act provides for a penalty of up to Rs. 10 lakhs for manufacturers or service providers who violate the Act. Repeat offenders may face a penalty of up to Rs. 50 lakh or even imprisonment for up to two years. The Act also provides for a penalty of up to Rs. 50,000 for individuals who engage in unfair trade practices, misleading advertisements, or other deceptive practices that harm consumers. The Act also provides for enhanced compensation to be awarded to consumers who suffer harm due to defective products or services. The maximum amount of compensation that can be awarded to a consumer has been increased to Rs. 1 crore. The Act also provides for punitive damages to be awarded to

consumers in cases where the manufacturer, seller, or service provider acted in a wilful or grossly negligent manner. Manufacturers, retailers, and service providers are discouraged from engaging in unfair trade practices or other deceptive practices that affect consumers by the increased penalties under the Consumer Protection Act 2019 (CPA). Increased consumer protection and the protection of their rights in the quickly changing marketplace are also goals of the higher fines and penalties.

REDRESSAL MECHANISM

The amended Act provides for mediation as an alternate dispute resolution mechanism to resolve disputes between consumers and companies.

The term "redressal mechanism" refers to the policies and procedures in place to address consumer complaints and grievances resulting from a negative experience with the goods or services they have purchased. Both the Consumer Protection Act of 1986 and the Consumer Protection Act of 2019 provide a redress system to safeguard customers' rights and give them a successful means of pursuing justice. Under the Consumer Protection Act 1986, consumers could file complaints with one of the three consumer forums established under the Act: The District Consumer Disputes Redressal Forum, the State Consumer Disputes Redressal Commission, and the National Consumer Disputes Redressal Commission. The forums had the power to hear complaints, award compensation to consumers, and impose penalties on violators of the Act. The Consumer Protection Act 2019 has further strengthened the redressal mechanism by introducing the concept of a Central Consumer Protection Authority (CCPA). The CCPA is a regulatory body that has the power to investigate violations of the Act, order product recalls, and impose penalties on violators. The Act also provides for a two-tiered dispute resolution mechanism, consisting of the District Commission and the State Commission, with the National Commission serving as an appellate body.

Section 74 of the Consumer Protection Act, 2019, deals with the establishment of the Central Consumer Protection Authority (CCPA). The CCPA is a regulatory body that is responsible for promoting, protecting, and enforcing the rights of consumers in India.

Some key provisions of Section 74 include:

1. Establishment of the CCPA

2. Powers of the CCPA

3. Composition of the CCPA

4. Procedure for inquiries and investigations

Overall, Section 74 of the Consumer Protection Act, 2019, aims to strengthen consumer protection in India by establishing a central regulatory authority with the power to investigate and enforce consumer rights.

Section 75:

This section states that a panel of mediators shall be prepared by the National Commission or the state commission which must be maintained by the consumer mediation cell which is attached to it on the recommendation of a selection committee consisting of the president and a member of that commission.

Section 76:

Panel of mediators can be elected by the central government or the state government based on his suitability of resolving the problem.

Section 77:

This section states that the mediator shall disclose certain facts regarding financial necessities to the parties concerned.

Section 78:

This section states about the replacement of mediator when the information furnished from the other person is better than that of the actual mediator concerned.

Section 79:

This section states that the mediation shall be conducted by the mediation cells attached to the central or state or district commission and also the duties of the mediator to conduct such mediation within the prescribed time and also to follow principles of the Natural justice while conducting mediation.

Section 80:

This section states the settlement of disputes.

The Act also introduces the concept of mediation as a means of resolving disputes between consumers and manufacturers, sellers, or service providers. Mediation involves a third-party mediator who assists the parties in reaching a mutually acceptable solution to the dispute. Furthermore, the Act mandates the establishment of consumer protection cells in each district, which are responsible for spreading awareness about consumer rights, receiving complaints from consumers, and forwarding them to the appropriate forum for redressal. The enhanced provisions under the Consumer Protection Act 2019 are aimed at making the redressal mechanism more efficient, transparent, and accessible to consumers, and at promoting a fair and competitive marketplace. The amended Act provides for mediation as an alternate dispute resolution mechanism to resolve disputes between consumers and companies. This is expected to reduce the burden on the courts and provide a quicker resolution for consumers.

E-COMMERCE:

Section 2 (16) "e-commerce " means buying or selling goods or services including digital products over digital or electronic networks.

E-commerce has been growing rapidly in recent years, and it has become a crucial part of the modern marketplace. With the advent of e-commerce, consumers can purchase goods and services online, from the comfort of their homes or offices, and have them delivered directly to their doorstep. Due to its convenience, people are choosing e-commerce more frequently. However, as e-commerce has expanded, worries about the preservation of consumer rights have surfaced. In this context, the Consumer Protection Act 1986 and the Consumer Protection Act 2019 play a crucial role in ensuring that consumers are protected from unfair trade practices and are able to seek redressal for any harm caused by defective products or services. From an e-commerce perspective, the Consumer Protection Act 2019 has introduced several new provisions that are particularly relevant to online transactions.

For example, the Act mandates that e-commerce platforms be held liable for the sale of counterfeit or defective products on their platforms. The Act also requires that e-commerce platforms provide detailed information about sellers and products, and maintain records of

transactions. Furthermore, the Act provides for a simplified dispute resolution mechanism for consumers who have purchased goods or services through e-commerce platforms. This mechanism includes mediation as a means of resolving disputes between consumers and sellers and mandates the establishment of consumer mediation cells to handle such disputes. These Acts provide consumers with a means of seeking redressal for any harm caused by defective products or unfair trade practices, and ensure that e-commerce platforms are held accountable for the products sold on their platforms. Online platforms and e-commerce transactions are now covered under the Act. E-commerce businesses are now required to publish crucial disclosures, such as the product's place of origin and comprehensive disclosures of their return and refund procedures

CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA):

Section 10 –

(1) the central government shall, by notification, establish with effect from such date as it may specify in that notification, a central consumer protection authority to be known as the central authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

(2) the central authority shall consist of a chief commissioner and such number of other commissioners as may be prescribed, to be appointed by the central government to exercise the powers and discharge the functions under this act.

(3) the headquarters of the central authority shall be at such place in the national capital region of Delhi, and it shall have regional and other offices in any other place in India as the central government may decide.

The Central Consumer Protection Authority (CCPA) is a regulatory body established under the Consumer Protection Act 2019. The CCPA is responsible for promoting, protecting, and enforcing the rights of consumers in India, and for ensuring that businesses comply with consumer protection laws. The CCPA is relevant to the above amendment in several ways. The Consumer Protection Act 2019, which created the CCPA, significantly strengthened the legal framework for consumer protection in India. The Act introduced several new provisions aimed

at protecting consumer rights, including provisions on unfair trade practices, product liability, and e-commerce.

The CCPA has been given broad authority to enforce consumer protection laws, including the ability to look into and punish infractions, seek compensation for customers injured by unfair trade practices, and order the recall of dangerous items. The Consumer Protection Act of 2019 greatly reinforced the provisions regarding product liability, which are among those that must be put into effect by the CCPA. Regardless of whether they were negligent in their design or production, manufacturers and service providers may be held strictly liable under the Act for damages brought on by defective products or services. The CCPA is a key regulatory body responsible for enforcing consumer protection laws in India. Its establishment under the Consumer Protection Act 2019 reflects the Indian government's commitment to protecting consumer rights and ensuring that businesses comply with consumer protection laws. The CCPA's relevance to the above amendment lies in its mandate to enforce the provisions of the Consumer Protection Act 2019, including those related to product liability, e-commerce, and unfair trade practices, and to ensure that businesses operating in India prioritize consumer protection.

This amended provision of the Consumer Protection Act, 2019 is aimed at ensuring the protection of consumers in India and holding companies accountable for their actions.

CONCLUSION

The Consumer Protection Act of 2019 is a thorough and urgently required overhaul of India's consumer protection law system. This legislation replaces the outdated Consumer Protection Act of 1986 and aims to provide better protection to consumers in the country. The new Act's widened scope of coverage as one of its major modifications. The 2019 Act protects more customers who make online purchases of goods and services by including e-commerce transactions in addition to traditional consumer transactions. The Act also establishes the Central Consumer Protection Authority (CCPA), a regulatory body with the power to investigate and prosecute violations of consumer protection laws. This is a significant step towards ensuring the effective enforcement of consumer protection laws in India. Another critical aspect of the 2019 Act is the provision for product liability. Under this provision, manufacturers and service providers can be held strictly liable for any harm caused by defective products or services. This provision provides a strong incentive for businesses to prioritize

product safety and reduce the number of defective products on the market. The Act also provides for enhanced penalties for violations of consumer protection laws, including fines and imprisonment. This provision sends a clear message to businesses that unfair and unethical practices will not be tolerated in India. The Consumer Protection Act 2019 is a significant improvement over the Consumer Protection Act of 1986, providing better protection to consumers, particularly those who shop online. Making sure that businesses prioritise consumer safety and protection is made possible through the foundation of the CCPA, the introduction of product liability, and the stiffer penalties for breaking consumer protection rules. The Act has the potential to revolutionise consumer protection in India with effective enforcement and active involvement from businesses and consumers.

REFERENCES:

1. A.K. *et al.* (2022) *Consumer Protection Act, 1986, I Pleadings*. Available at: <https://blog.ipleaders.in/consumer-protection-act-1986-amendment-bill-2018/> (Accessed: 13 May 2023).
2. *Amendments to E-Commerce Rules 2020* (2021) *The Law Tree*. Available at: <https://thelawtree.akmlp.com/whats-brewing/amendments-to-e-commerce-rules-2020/> (Accessed: 13 May 2023).
3. *Proposed amendments to consumer protection (e-commerce) rules,..., Investment Promotion and Facilitation Agency*. Available at: <https://www.investindia.gov.in/team-india-blogs/proposed-amendments-consumer-protection-e-commerce-rules-2020> (Accessed: 13 May 2023).
4. *Home: Department of consumer affairs: Ministry of consumer affairs food and public distribution: Government of India* (no date) *Home | Department of Consumer Affairs | Ministry of Consumer Affairs Food and Public Distribution | Government of India*. Available at: <https://consumeraffairs.nic.in/acts-and-rules/consumer-protection> (Accessed: 13 May 2023).
5. *A primer on the draft E-COMMERCE rules 2021* (2021) *Legal Maxim*. Available at: <https://www.legalmaxim.in/a-primer-on-the-draft-e-commerce-rules-2021/> (Accessed: 13 May 2023).