



A general introduction of consumer protection act, 1986

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Abstract

Only statutory umbrella could be a right, perfect and an effective dose for a consumer to have his say. That consumer is the king, came slowly to receive statutory recognition in India, both in the form of educating a consumer and also compensating him by summary and inexpensive proceedings. In fact, recognizing the rights of a consumer keeps the manufacturer and a trader alert, creative and innovative which in any developing country are essential tools and means of development. The consumer wants a full value for his money whether he purchases goods or hires services. If the manufacturer is made accountable for defects or deficiencies, the improvement would follow a consequence. Seeking redressal through courts is not only time consuming but also a costly process. It was therefore felt necessary that not only the consumer is to be educated and his interests are to be protected but redressal forums providing summary and inexpensive reliefs are a must if consumer movement in India is to receive a boost and effectively counter the strong lobby of manufacturers or traders. The Consumer Protection Act. (CP Act) 1986 was therefore enacted. It has been comprehensively amended by Consumer Protection Amendment Act, I 991, I 993 and 2002. The Act is supplemented by the Consumer Protection Rules.

Keywords: consumer protection, act, 1986

1. Introduction

Consumer Protection Act, 1986

The year 1986 is a Magna Carta in the history of consumerism. It was this year that witnessed the enactment of the Consumer Protection Act. This Act is one of the benevolent social legislation intended to protect the large body of the consumers from exploitation. The Consumer Protection Act, I 986 has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation enacted in the country during past few years. It has become the vehicle for enabling people to secure speedy and in-expensive redressal of their grievances. With the enactment of this law, consumers now feel that they are in a position to declare "Sellers Beware" whereas previously the consumers were at the receiving end and generally told "Buyers Beware".

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Now in this chapter, efforts have been made to discuss the provisions under CP Act, 1986 and amendments. Efforts have also been made to analyze critically and evaluate the case references of various judgments given by District Fora, State Commission and National Commission.

Objectives & Scope of the Act

The Consumer Protection Act, 1986 was enacted to provide for better protection to the interest of consumers and for that purpose to make provisions for the establishment of consumer council and other authorities for the settlement of consumers' disputes and for matters connected therewith.

The Act, inter alla, seeks to promote and protect the rights of consumers such as:

1. Right to be protected against marketing of goods which are hazardous to life and property.
2. Right to be informed about the quantity, potency, purity, and price of goods to protect the consumer against unfair trade practices.
3. Right to be assured, wherever possible, access to variety of goods at competitive prices.
4. Right to be heard that consumer's interest will receive due consideration at appropriate forums.
5. right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

6. Right to consumer education.

The objectives are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State levels.

The Act applies to all goods and services, except otherwise provided by the Central Government by notification. To provide speedy and simple redressal of consumer disputes, a quasi-judicial machinery is set up at the District, State and Central levels. The three-tier system of quasi-judicial bodies will observe the principles of natural justice and are empowered to give reliefs of a specific nature and to award, wherever appropriate compensation to consumers. Penalties for noncompliance of the orders given by the quasi judicial bodies have also been provided.

Nature of Consumer Protection Act, 1986

While other legislations may be either punitive or preventive, the Consumer Protection Act compensates the consumer. The provisions of the Act are in addition to and not in derogation of the provisions of any law for the time being in force (Sec.3). In *Marine Container Services South Pvt. Ltd. V. Government I 998(3) 5CC 247*, it has been held that the Contract Act applies to all litigants before the Commissioner under the Consumer Protection Act. The Consumer Protection Act therefore gives the consumer an additional remedy besides those which may be available under other existing laws. Existence of an arbitration clause in the agreements is no bar to the entertainment of complaint by the Redressal Agency as the remedy under the Act is in addition to the provision of any other law (*Skypak Couriers Ltd. V. Tata Chemicals Ltd-2000(5) SCC294*). However, the Consumer Forums under the Act have not taken over the jurisdiction of Civil Courts. If the dispute between the parties is pending in Civil Court, no Consumer Forum will adjudicate the dispute. Similarly, if evidence to be laid by the parties to the dispute is voluminous or 'complicated, the parties will be referred to the appropriate Civil Court.

Consumer Protection Act, thus enshrines the rights of a consumer to be informed about the quality, potency, price etc. of the goods to be protected against unfair trade practices, to seek inexpensive and expeditious, use, redressal of grievances before the Consumer Forums. Consumer Protection Act is a benevolent piece of legislation to protect a large body of consumers from exploitation (*Charan Singh V. Healing Touch Hospifal- 2000 (7) 5CC 668*).

Terminology

Consumer [(Sec.2(i)(d)]

A consumer is a person who

1. buys any "goods" for a consideration; or
2. hires or avails of any "services" for a consideration;
3. "uses the goods" with the approval of the person who has bought the goods for consideration;
4. "is beneficiary of services" with the consent of the person who has hired the services for consideration.

Consideration may have been paid or promised, or partly paid and partly promised. A person may also buy the goods or may hire or avail of the services under any system of deferred

payment. Buying of goods and hiring of services have to be necessarily for a consideration. There should be a completed transaction of sale and purchase. A person claiming himself as 'consumer' should satisfy, among others, three conditions namely, (i) the service should have been rendered to him, (ii) the service should be hired by him, and (iii) he should have paid the consideration for hiring the service,

A person who buys goods and uses them himself, exclusively for the purpose of earning his livelihood, by means of self employment, is within the definition of the expression 'consumer' (*Laxmi Engineering Works v.P.S.G. Industrial Institute -AIR 1995 SC 1428*).

To seek redressal under the consumer Protection Act, it is necessary to first to prove that one is a 'consumer' as defined under the Act. The term 'consumer' has also been defined separately for the purpose of goods and services.

Goods

The meaning of the word "Goods" under the consumer Protection Act is the same as defined in the Sale of Goods Act, I 930. Goods means every kind of movable property other than actionable claims and money.

Services

Service means service of any description which is made available to potential users. It includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement etc. Service, however, does not include the rendering of any service free of charge or under a contract of personal service [(Sec. 2(0)].

He definition of the word, 'service' as defined under the Act is very wide enough to include every type of service that could be contemplated. It is inclusive but not exhaustive. There may be many other types of services. If rendering of service falls within the definition and if a person is a consumer, he has a right to claim compensation for deficiency in service, if any. Only service which is rendered free of charge or under a contract of personal service is excluded. However, the facility of medical treatment offered in the Government hospital does not constitute service [(consumer Unity and Trust Society v. State of Rajasthan-1991 CPR-241 (NC)].

A medical treatment rendered to a patient by the doctor is clearly a service in *Mappooyan V. Premavathy Illango*, reported in 1994(2) (88), it was held that the medical treatment given by a private medical practitioner is a service. Similarly, insurance companies, borrowing and financial institutions, transport agencies, negligence in regard to settlement of an insurance claim is electric supply companies, all render services. Default or deficiency of service. Wrong disconnection of telephone connection, not working of telephone or telephone lying dead for unreasonable time is deficiency of service. All types of negligence can be bracketed under "deficiency" of service. But non-payment of insurance claim where the insurance company has sufficient reasons to decline a claim is not deficiency of service (*New Jaipur Dyeing v. Oriental Insurance Co. - 1991(1) CPR-149*).

Service of any nature hired for consideration would be service within the ambit of definition. Hiring of marriage hall is also

hiring of service (HR. Gill v. Suryavanshi Kshatriya Samaj - 1992(1)CPR-647). Only gratuitous service, i.e., service hired without consideration or free services are excluded from the ambit of the service.

Contract of Personal Service

A 'service' under a contract of personal service does not come within the preview of 'service' under the Act. A service offered by an advocate to his client is under a contract of personal service and therefore is not included in the definition. A client hiring the service of an Advocate is not a consumer within the meaning of the word "consumer" under the Act. Service rendered by a private tutor is also an example of personal service.

For the service rendered, the person has to pay a charge or a fee for a price demanded for the service. Where a person contacts for installation of a telephone, he is required to pay installation charges, call charges etc. It is clearly a case of hiring or contract for service. The transport facilities like traveling by railway or airlines by paying for the service, etc. is covered by the term service. Settlement of insurance claims will be covered by the definition of service. Contracting with Housing and Development Board is hiring service of the board as the board is engaged in offering services for allotment of plots and houses to the public [(Sushil Devi v. Raj Sudha - 1991 CPJ 620 (Del.)]. The Banking service is expressly included in the word 'service'. However, if failure to render service is beyond the control of the Bank, no claim for compensation can be sustained [Federal Bank v. Bion Mishra - 1991 cpj 16 (NC)]. The student who pays tuition fees and hires the services of an institution acquires the rights of a consumer.

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